The Central Law Journal.

ST. LOUIS, FEBRUARY 26, 1892.

The decision by the English House of Lords, affirming the judgment of the Court of Appeal, in what is known as the Mogul Steamship Company case settles an important question involving the law as to the validity of combinations in trade. It appears that the appellant company was formed for the purpose of carrying on the business of shipowners, and of taking over certain vessels belonging to others, including some which were regularly employed in the Hankow trade. The respondents, who included a number of firms besides the one mentioned in the title of the case, were engaged in the general China and Japan trade. The appellants alleged that the respondents combined together in an illegal manner to keep up freights by allowing a rebate of 5 per cent. on all freights paid by shippers who shipped tea for Europe in their vessels alone.

The appellants further alleged that these acts of the respondents were done by the respondents with the malicious intent of injuring the appellants' trade, and did injure it, and they claimed that the damage caused thereby gave them a right of action against the respondents. The latter, on the other hand, alleged that their acts were reasonable and proper, and were in fact done solely for the protection and furtherance of their own trade interests and infringed no legal rights of the appellants, and, further, that there was no evidence of the appellants having sustained any legal damage whatever in consequence of any acts of the respondents. The action was tried in the first instance by Lord Chief Justice Coleridge without a jury. He gave a judgment for the respondents, which was affirmed by the Court of Appeal, and now has been finally affirmed by the House of Lords.

The Lord Chancellor, who read the principal opinion, said that the acts complained of resolved themselves into an endeavor by an associated body of traders to get the whole trade into their own hands by offering exceptional and very favorable terms to customers who would deal exclusively with them —terms so favorable that but for the object of keeping the trade to themselves they would not give them, and which if their trading were confined to one particular period would make them trade at a loss, but which they gave in the belief that by such competition they would prevent rival traders from competing with them, and so receive the whole profit of the trade to themselves. He added that after a most careful study of the evidence in the case he had been unable to discover anything more against the members of the associated body of traders other than an offer of reduced freights to persons who will deal exclusively with them; and if this was unlawful the greater part of the commercial dealings where there is rivalry in trade must be equally unlawful. One of the members of the court in effect said that it was not the function of English courts of law to fix the lowest prices at which traders could sell or hire for the purpose of protecting or extending their business without committing legal wrong which might subject them in damages, and that until that became the law of the land it would be idle to suggest to the legislature that mercantile competition ought to be gauged by the amount of the consideration for which a competing trader sees fit to part with his goods or to accept employment.

The decision will be read with much interest in this country as well as in England. As is said by Bradstreets, in commenting upon the case from the standpoint of the merchant, it indicates clearly enough that there is a large field in which freedom of contract and of combination in commerce exists where the elements of intimidation or violence or monopoly in things or services affected with a public interest are not involved.

We have neglected to note the receipt of pamphlets containing the reports of last year's proceedings of the Alabama and Mississippi State Bar Associations. At the meeting of the former an interesting address was delivered by Hannis Taylor, president of the association. A paper was read by W. R. Nelson on "Business methods for lawyers." The report of the committee on jurisprudence and law reform, through its chairman Alex. T. London suggested needed reforms in the laws of Alabama.

The addresses delivered and papers read a

the meeting of the Mississippi association were of special interest. The address of the President, R. H. Thompson is particularly noteworthy, being an exhaustive and critical review of the changes wrought by the adoption of the new constitution in that State. The address of R. C. Beckett, nominally on the subject of a codification of laws interstate and national, was chiefly of a political character. That read by S. S. Calhoun reviewed the judicial constructions of a local statute which in effect provides that if any person shall transact business in his own name and fail to disclose the name of his principal by a sign, the goods shall be liable to his debts. The address was interesting and at times humorous. Edward Mayes read a long and valuable paper on "The Administration of Estates in Mississippi." Its length is such that we wonder that he wasn't interrupted by a motion "for leave to print," The paper is, however, of great value to practitioners in that State.

We are pleased to see these State bar association growing in strength and numbers, and we hope the time is not far distant when all practitioners will be enrolled as members.

NOTES OF RECENT DECISIONS.

FERRIES—EXCLUSIVE RIGHTS—GRANTS BY CITIES—INTERSTATE COMMERCE.—In Carroll v. Campbell, 17 S. W. Rep. 884, the Supreme Court of Missouri holds that to entitle a person to have an unlicensed ferry restrained, it is enough that he show that he is the only person entitled to take tolls for ferriage within the territorial limits. The grant to a city by the legislature of the right of licensing ferries does not empower the city to grant exclusive ferry privileges. The grant of an exclusive ferry privilege by a city which has power only to grant the privilege free from such exclusive feature is void only as to the unauthorized part. The grant of a ferry privilege within the limits of the city, is not an interference with interstate commerce, though the business of the ferry is across a navigable river to another State.

STIPULATION BY ATTORNEY—EFFECT ON INFANT CLIENTS.—The Supreme Court of Minnesota hold in Eidam v. Finnegan, 50 N. W. Rep. 933, that a stipulation by an attorney that the action shall abide the event of another action pending, binds his adult clients, unless it be improvidently, fraudulently, or collusively made. But such stipulation does not bind an infant party unless approved and ratified by the court upon a showing that it is for the interest, or, at least not prejudicial to the interest, of the infant. It must appear that the matters in controversy in the two actions, so far as affected the infant, are precisely the same, and that he is represented in the two actions by the same guardian *ad litem*. Gilfillan C. J. says:

> While it is true, as a general rule, that an attorney may bind his client by such a stipulation as this, it does not follow that the attorney employed by a guardian *ad litem* to represent the minor defendants may do so. The authority of the attorney cannot be greater than that of the guardian who employs him. It is necessary, therefore, to consider what is the authority of the guardian. The statute regulates the appointment of guardians *ad litem*, but does not define their powers. When appointed for an infant defendant, it is to defend the interests of the infant in the action. Some of the decisions limit his powers so as practically to deprive him of all discretion or exercise of judgment in conducting the defense. Thus it has been held that the answer made by the guardian should be a full defense, specifically denying the material allegations, without reguard to the truth of the denials as to anything which may be prejudical to the minor, (Varner v. Rice, 44 Ark. 236; Pillow v. Sentelle, 59 Ark. 61; Brenner v. Bigelow, 8 Kan. 496;) that he cannot waive any rights of the minor, (Cartright v. Wise, 14 Ill. 417; Litchfield v. Burwell, 5 How. Pr. 341; Howell v. Mills, 53 N. Y. 322;) nor make admissions either in the answer or for the purpose of the trial, (Ashford v. Patton, 70 Ala. 479; Quigley v. Roberts, 44 Ill. 503; Tucker v. Bean, 65 Me. 352; Newins v. Baird, 19 Hun, 306). The decisions we have cited, though they are extreme and go further than we would be willing to go, are in line with all the authorities, and accentuate the proposition that the relation between the guardian *ad litem* or the attorney whom he employs and the infant defendant is not the same as that between an attorney and an adult client. We would not be willing to assent to the proposition that a guardian *ad litem* or the attorney may not, in good faith, exercise discretion or judgment in the conduct of the cause. As our system or pleading does not provide any form of answer or verification by a guardian *ad litem* different from that for any other defendant, we do not think an answer by the guardian can be condemned merely because it does not deny material allegations in the complaint. Nor can we admit that concessions or admissions such as are ordinarily made in the progress of a cause, and which are entirely consistent with good faith, and which it is frequently for the interest of a party to make, may not be made by the guardian. To hold otherwise would impeach any trial in which the guardian or attorney omitted to make objections to evidence or proceedings in the trial which he might have made. So in *Re* Hawley, 100 N. Y. 206, 3 N. E. Rep. 68, and in *Re* Tilden, 98 N. Y. 434, it was held that a decree allowing the accounting of an executor could not be vacated on the application of a minor in-

terested in it, and represented by a guardian *ad litem*, on the ground that items in the account ought not to have been allowed, nor upon any other ground than such as would have been available to an adult. And in Reed v. Reed, 46 Hun, 212, it was held that a judgment in partition could not be assailed, though in the same action, on the ground that the guardian *ad litem* might have objected, but did not, that the plaintiff had not such interest as entitled him to bring the action. The adult parties to an action have rights in it as well as the parties who are minors. The former are not to be made, without their consent, the guardians to protect the rights of the latter. It is for the court to see that rights of the minors are protected. This duty it performs by appointing a proper person as guardian in the manner provided by law, and by the exercise, whenever necessary, of its right of supervision and control over the acts and conduct of the guardian thus appointed. In the exercise of this control the court may set aside or disregard acts or concessions of the guardian which have not already passed its scrutiny, and which, though fair on their face, are shown to the court to have been improvidently or fraudulently done or made. And it may and ought to set aside or disreguard such acts or concessions as apparently waive or surrender any material right of the minor, such, for instance, as the right to a trial unless they be shown to be beneficial, or at any rate, not prejudicial to the rights and interests of the minor. The power of supervision and control over the guardian includes the right to accept and act upon what he has done, or, if proper protection to the interests of the minor require it, to reject and disregard what he has done. It is a matter for the court in which the action is pending, and no other. It may commit error in the matter; for instance, it may assume to be binding on the court an act, admission, or stipulation of the guardian which it ought to set aside or disregard.

HUSBAND AND WIFE—ACTION BY WIFE FOR ENTICEMENT OF HUSBAND.—A writer in the current number of the *American Law Review* on the subject of "The Husband Seducer" interestingly discusses the modern question as to the right of action by the wife for the alienation of the husband's affections. After a review of the authorities the writer concludes that notwithstanding the favorite boast of the ancient common-law that there was a remedy for every right, he finds it "difficult to believe that it was considered that the wife at common-law had any such right as that in question, when the attempt to enforce it could not have been made without joining the husband as a plaintiff and the fruits would have belonged to the husband if the attempt were successful and when the practical result would have been to enrich the husband for his own wrong-doings." To the cases collected in that paper might now be added very recent decisions of the Supreme Court of Michigan and Indiana. In Warren v. Warren, 50 N. W. Rep. 842, the Supreme Court of the former State holds that under How. St. § 6295, which provides that the real and personal estate of every female, however the same may be acquired either before or after marriage, shall remain her property and not be liable for the obligations of her husband and may be contracted, sold or devised by her the same as if she were unmarried and § 6297 which provides "that actions may be brought by and against a married woman in relation to her sole property in the same manner as if she were unmarried" etc.—a wife may maintain her action in trespass for the alienation of the affections of her husband. Upon the subject of the Wisconsin case of Duffies v. Duffies which maintains a different doctrine, the Michigan court says:

With all due respect to that court and the learned judge who wrote the opinion, I cannot recognize the reasoning in support of the decision as sound. The argument, in substance, is that the wife is purer and better than the husband, and governed more by principle, and she seldom violates the marriage obligations. That she is more domestic, and is supposed to have the personal care of the household. Her duties require her to be more constantly at home, where the husband may nearly always expect to find her and enjoy her society; while the husband is obliged by his business to be frequently away from home, which deprives his wife of his society. He is exposed to the temptations of the world, to which he easily succumbs, withdrawing him away from her, which condition of things the wife had reason to expect when she married him. And that for these reasons it cannot be said that the "wife's right to the society of her husband is the same in kind, degree, and value as his right to her society." It is also said by the learned judge that, "if permitted, the right of action in the wife would be the most fruitful source of litigation of any that can be thought of," and that the justice and advantages of such an action are at least doubtful. It seems to me that the necessary absence from the home of one more than the other can make no difference in their respective rights. Although the wife may never go outside the threshold of the home, the husband cannot enjoy her society unless he is also in the house; nor can she enjoy his society while he is away from her. Nor is the fact that she is purer and more domestic than her husband, and less likely to abandon the home than he is, any reason why she should be denied the same redress that he has in such cases. Because the history of the race, and our knowledge of human nature, tell us that the wife is less easily led astray, and her affections alienated, than her husband, is no reason why she should be denied the remedy which for the same wrong is freely given him. And if, as suggested by the learned judge, such actions would be numberless if permitted to the wife, it would still furnish no adequate ground for denying to a deserving woman, foully wronged in her dearest rights, the redress that the law gives without question to her husband under like circumstances. It is an old maxim, and a good one, that the law will never "suffer an injury and a damage without redress." Will the law aid the husband, and not help the wife in a like case? Not under the pres

ent enlightened views of the marriage relation and its reciprocal rights and duties. The reasoning that deprives the wife of redress when her husband is taken away from her by the blandishments and unlawful influence of others is a relic of the barbarity of the common law, which, in effect, made the wife the mere servant of her husband, and deprived her of all right to redress her personal wrongs except by his will.

The Supreme Court of Indiana hold in Haynes v. Nowlin, 29 N. E. Rep. 389, that since the statutes have given to married woman the right to sue alone for injuries to their persons and property a married woman can maintain an action in her own name against one who wrongfully entices her husband from her and thereby deprives her of his consortium and support. The court say, of the case of Logan v. Logan, 77 Ind. 588, in which a different conclusion was reached that "that decision was by a divided court and the question was not fully considered; not a single authority was there adduced nor is there any consistent line of reasoning. We should be strongly inclined to to deny the soundness of that decision if it were necessary to do so, but it is not necessary that we should overrule it, for since the cause of action there declared invalid arose, radical changes have been made by statute. The right as well as the obligations of married woman have been greatly enlarged."

The reader will find the authorities on this subject reviewed in note to Duffies v. Duffies 31 Cent. L. J. 29.

MASTER AND SERVANT—RISKS OF EMPLOYMENT.—Fitzgerald v. Connecticut River Paper Co., 29 N. E. Rep. 464, decided by the Supreme Judicial Court of Massachusetts is a good one on the subject of how far a servant assumes the risks of an employment. It was held that a servant by entering an employment necessitating the use of steps, does not assume the risk of an injury by reason of their subsequent icy condition, where, when the contract was made, the steps were not icy, nor was there reason to suppose that the business involved a risk in regard to them. An employee, in attempting to leave her employer's mill by steps which are the only means of egress, and which are rendered icy by the freezing of spray falling from steam pipes, of which fact she is aware, does not, as a matter of law, voluntarily assume a risk, which she understands, where the degree of slipperiness is not determinable by ocular inspection; and, in an action for injuries sustained by slipping on such steps, the question of negligence is for the jury. Knowlton, J. says:

In the present case it does not appear that the steps were icy, or that there was any reason to suppose that the business involved a risk in regard to them, when the plaintiff entered the defendant's service. It cannot be held that when she made her contract she assumed the risk of such an injury as she afterwards received. We therefore come to the question whether, by her conduct since, she has assumed such a risk.

The doctrine, *volenti non fit injuria*, has not been very much discussed in the cases in this commonwealth, but it is as well established in the law, and it has been repeatedly recognized by this court. Horton v. Ipswich, 12 Cush. 488; Wilson v. Charleston, 8 Allen, 137; Huddleston v. Machine-shop, 106 Mass. 282; Mellor v. Manufacturing Co., 150 Mass. 362, 23 N. E. Rep. 100; Miner v. Railroad Co., 153 Mass. —, 26 N. E. Rep. 994; Wood v. Locke, 147 Mass. 604, 18 N. E. Rep. 578; Lewis v. Railroad Co., 153 Mass. —, 26 N. E. Rep. 431; Lovejoy v. Railroad, 125 Mass. 79; Yeaton v. Railroad Co., 135 Mass. 418; Scanlon v. Railroad Co., 147 Mass. 484, 18 N. E. Rep. 209. In England it has been much discussed, and the difficulties in the application of it have frequently been considered by the courts. The rule of law briefly stated, is this: One who knows of a danger from the negligence of another, and understands and appreciates the risk therefrom, and voluntarily exposes himself to it, is precluded from recovering for an injury which results from the exposure. It has often been assumed that the conduct of the plaintiff in such a case shows conclusively that he is not in the exercise of due care. Sometimes it is said that the defendant no longer owes him any duty; sometimes that the duty becomes one of imperfect obligation, and is not recognized in law. In one form or another the doctrine is given effect, as showing that, in a case to which it applies, there is either no negligence towards the plaintiff on the part of the defendant, or a want of due care on the part of the plaintiff. In Thomas v. Quartermaine, 18 Q. B. Div. 685, Bowen, L. J., says: "The duty of an occupier of premises which have an element of danger upon them reaches its vanishing point in the case of those who are cognizant of the full extent of the danger and voluntarily run the risk." It would be unjust that one who freely and voluntarily assumes a known risk for which another is, in a general sense, culpably responsible, should hold that other responsible in damages for the consequences of his own exposure. In Yarmouth v. France, 19 Q. B. Div. 647, Lord Esher, M. R., expresses the opinion that in such a case it is incorrect to say that the defendant no longer owes a duty to the plaintiff, but that it should rather be said that the duty is one of imperfect obligation, performance of which the law will not enforce. It may be said that the voluntary conduct of the plaintiff in exposing himself to a known and appreciated risk is the interposition of an act which, as between the parties, makes the defendant's act, in its aspect as negligent, no longer the proximate cause of the injury; or, at least, is such participation in the defendant's conduct as to preclude the plaintiff from recovering on the ground of the defendant's negligence. Certainly it would be inconsistent to hold that a defendant's act is negligent in reference to the danger of injuring the plaintiff, and that the plaintiff is not negligent in voluntarily exposing himself when he understands the danger. It is to be remembered that, in determining whether a defendant is negligent in a given case, his duty to th

plaintiff at the time is to be considered, and not his general duty, or his duty to others. Therefore, when it appears that a plaintiff has knowingly and voluntarily assumed the risk of an accident, the jury should be instructed that he cannot recover, and should not permitted to consider the conduct of the defendant by itself, and find that it was negligent, and then consider the plaintiff's conduct by itself, and find that it was reasonably careful. But this principle applies only when the plaintiff had voluntarily assumed the risk. As is said by Bowen L. J., in Thomas v. Quartermaine, *supra*, the maxim is not *scienti non fit injuria*, but *volenti non fit injuria*. The chief practical difficulty in applying it is in determining when the risk is assumed voluntarily. In the first place, one does not voluntarily assume a risk who merely knows that there is some danger, without appreciating the danger. On the other hand, he does not necessarily fail to appreciate the risk because he hopes and expects to encounter it without injury. If he comprehends the nature and the degree of the danger, and voluntarily takes his chance, he must abide the consequences, whether he is fortunate or unfortunate in the result of his venture. Sometimes the circumstances may show as a matter of law that the risk is understood and appreciated, and often they may present in that particular a question of fact for the jury.

What constraint, exigency, or excuse will deprive an act of its voluntary character when one intentionally exposes himself to a known risk is a question about which learned judges differ in opinion. It has been held by some that where a man is not physically constrained, where he can take his option to do a thing or not to do it, and does it, he must be held to do it voluntarily. See opinion of Lord Bramwell in Membery v. Railway Co., L. R. 14 App. Cas. 179, and the dissenting opinion in Eckert v. Railroad Co., 43 N. Y. 502. But by the authorities generally, one who in an exigency reluctantly determines to take a risk is not held so strictly. There has been much difference among the English judges in regard to the question whether a servant who discovers a defect in machinery, not existing when he entered the service, which the master is bound to repair, and who works on, understanding the danger, rather than to lose his place by complaining of it or refusing to work until it is repaired, shall be held to have voluntarily assumed the risk. In Membery v. Railroad Co., *supra*, Lord Bramwell expresses the opinion that the plaintiff cannot recover in such a case, while the lord chancellor and Lord Herschell, without expressing an opinion, prefer to keep the question open for consideration. In Thrussel v. Handyside, 20 Q. B. Div. 359, the court of queen's bench holds that a workman, by continuing to work under such circumstances, does not voluntarily assume the risk; and in Yarmouth v. France, 19 Q. B. Div. 647, a majority of the court of appeals are of the same opinion. In Sullivan v. Manufacturing Co., 113 Mass. 396, is the following language: "Though it is a part of the implied contract between master and servant (where there is only an implied contract) that the master shall provide suitable instruments for the servant with which to do his work, and a suitable place where, when exercising due care himself, he may perform it with safety, or subject only to such hazards as are necessarily incident to the business, yet it is in the power of the servant to dispense with this obligation. When he assents, therefore, to occupy the place prepared for him, and incur the dangers to which he will be exposed thereby, having sufficient intelligence and knowledge to enable him to comprehend them, it is not a question whether such a place might with reasonable care, and by a reasonable expense, have been made safe. His assent has dispensed with the performance on the part of the master of the duty to make it so. Having consented to serve in the way and manner in which the business was being conducted, he has no proper ground of complaint, even if reasonable precautions have been neglected." In Goodnow v. Mills, 146 Mass. 261, 15 N. E. Rep. 576, it is said that "there was no danger which, in view of the plaintiff's knowledge and capacity, must not have been well understood by or apparent to him, and there was therefore no negligence on the part of of the defendant in exposing him to it. In Leary v. Railroad Co., 139 Mass. 580, 2 N. E. Rep. 115 Mr. Justice Devens uses these words: "But the servant assumes the dangers of the employment which he voluntarily and intelligently consents, and while ordinarily he is to be subjected only to the hazards necessarily incident to his employment, if he knows that proper precautions have been neglected, and still knowingly consents to incur the risk to which he will be exposed thereby, his assent dispenses with the duty of the master to take such precautions." In this commonwealth, as well as elsewhere, plaintiffs have been precluded from recovering, alike where there assumption of the risk grew out of an implied contract in reference to the condition of things at the time of entering the defendant's service, and where they voluntarily assumed a risk which came into existence afterwards. Moulton v. Gage, 138 Mass. 390; Taylor v. Manufacturing Co., 140 Mass. 150, 3 N. E. Rep. 21; Wood v. Locke, 147 Mass. 604, 18 N. E. Rep. 578; Murphy v. Greeley, 146 Mass. 196, 15 N. E. Rep. 654; Huddleston v. Machine-shop, 106 Mass. 282; Pingree v. Leyland, 135 Mass. 398; Gilbert v. Guild, 144 Mass. 601, 12 N. E. Rep. 368; Lothrop v. Railroad Co., 150 Mass. 423, 23 N. E. Rep. 227; Mellor v. Manufacturing Co., 150 Mass. 362, 23 N. E. Rep. 100; Minor v. Railroad Co., 153 Mass.—, 26 N. E. Rep. 994; Lewis v. Railroad Co., 153 Mass.—, 26 N. E. Rep. 431. This court has recognized the doctrine that mere knowledge of a danger will not preclude a plaintiff from recovering unless he appreciates the risk. Scanlon v. Railroad Co., 147 Mass. 484, 18 N. E. Rep. 209; Linnehan v. Sampson, 126 Mass. 506; Ferren v. Railroad Co. 143 Mass. 197, 9 N. E. Rep. 608; Taylor v. Manufacturing Co., 140 Mass. 150, 3 N. E. Rep. 21; Williams v. Churchill, 137 Mass. 243; Lawless v. Railroad Co., 136 Mass. 1. See, also, Thomas v. Quartermaine and Yarmouth v. France, *supra*. Many other cases in which the plaintiff has not been precluded from recovering may be referred to this principle, and some of them more properly rest on the ground that there were such considerations of duty or exigency affecting him as to present a question whether the assumption of the risk was voluntary or under an exigency which justified his action, and induced him unwillingly to encounter a danger to which he was wrongfully exposed. Pomeroy v. Westfield, 154 Mass. —, 28 N. E. Rep. 899; Mahoney v. Railroad, 104 Mass. 73; Lyman v. Amherst, 107 Mass. 339; Thomas v. Telegraph Co., 100 Mass. 156; Dewire v. Bailey, 131 Mass. 169; Looney v. McLean, 129 Mass. 33; Gilbert v. Boston, 139 Mass. 313; Eckert v. Railroad Co., 43 N. Y. 502. Whether the fear of losing one's situation would constitute such an exigency, where the place had become dangerous by reason of the negligence of the employer to repair it, especially if notice of the danger had been given by the servant, and there had been a promise speedily to repair it, we need not decide in this case. See Leary v. Railroad Co., 139 Mass. 580; Haley v. Case, 142 Mass. 316; Osborne v. R. R. Co., 21 Q. B. Div. 220.

BONA FIDE PURCHASERS BY QUITCLAIM.

The Law Conflicting.—There are but few specific subjects of the law presenting a greater conflict and confusion of judicial decision thereon than that of the right of a purchaser by quitclaim to protection against prior unrecorded conveyances and equities affecting the property, of which he had no notice at the time of his purchase. This may be attributed in part to differences in the statutes of conveyances and recording acts of the various States, and in the terms of the instruments respectively under consideration; but it is due principally to a difference in the views of the courts upon the propositions involved, and especially as to the proper construction and effect of a quitclaim in charging notice of defective title and outstanding equities. This question of construction, as the leading one in the matter, will be first considered.

View that Subsequent Purchaser is not Entitled to Protection.—The greater weight of judicial authority is to the effect that a purchaser by quitclaim cannot in law be *bona fide*, and takes only the interest that his grantor really had at the time of the conveyance.[1] The very form and terms of the instrument affect him notice. It does not by its terms purport to convey the land, or the absolute right and title thereto; it merely "remises, releases and quitclaims all the right, title and interest" which the grantor may then have therein, and which, if he has already conveyed to another, is nothing. Its terms are satisfied whether the grantor has a fee-simple title or none at all. It does not appear therefrom that any certain or indefeasible interest or estate was intended to be conveyed, and it is for this reason that a quitclaim will not carry an after-acquired title by estoppel. As the grantor gives no assurance against his own prior acts, the terms of the contract confer on the grantee no right to claim that he takes the property clear of such acts. The purchaser buys at a venture the claim or interest of the grantor, be it more or less, and it is to be supposed that the price is fixed accordingly. A quitclaim is ordinarily used only in the conveyance of a doubtful or imperfect title, and it is this that lends a special significance to the instrument, and to its construction with respect to good faith. The tender of a quitclaim being tantamount to a declaration by the seller that his title is defective, this of itself puts the buyer on notice. As such instruments incur no responsibility, they may be recklessly given, and readily obtained for the purpose of beclouding estates and trafficking in real or supposed imperfections of title; and it is therefore a wise and wholesome rule that a purchaser by quitclaim shall not be regarded in law as *bona fide*, even though in fact he buys without notice and for valuable consideration.[2]

View that Quitclaim Purchaser is Entitled to Protection.—Other courts of eminent ability, however, hold that a quitclaim does not by its form and terms alone deprive the grantee of the character of a *bona fide* purchaser entitled, as other purchasers, to the general protection of the recording acts.[3] A

[1] Steele v. Sioux Valley Bank, 79 Iowa, 339, 44 N. W. Rep. 564, 18 Am. St. Rep 370; Peters v. Cartier, 80 Mich. 124, 45 N. W. Rep. 73; Eaton v. Trowbridge, 38 Mich. 454; Gest v. Packwood, 34 Fed. Rep. 372; Peaks v. Blethen, 77 Me. 510; O'Neill v. Seixas, 85 Ala. 80, 4 South. Rep. 745; Garret v. Christopher, 74 Tex. 453, 12 S. W. Rep. 67, 15 Am. St. Rep. 850; Logan v. Neill, 128 Pa. St. 457, 18 Atl. Rep. 343; Leland v. Isenbeck, 1 Idaho, 469; Gress v. Evans, 1 Dak. 387, 46 N. W. Rep. 1132; Brown v. Jackson, 3 Wheat. 449; Dickerson v. Colgrove, 100 U. S. 578; Snow v. Lake, 20 Fla. 656, 51 Am. Rep. 625; McAdow v. Black, 6 Mont. 601, 13 Pac. Rep. 357; Woodfolk v. Blount, 3 Hayw. 147, 9 Am. Dec. 739; Smith v. Pollard, 19 Vt. 272; American Mortgage Co. v. Hutchinson (Oreg.), 24 Pac. Rep. 515; Derrick v. Brown, 66 Ala. 162; Hancock v. Tram Lumber Co., 70 Tex. 314, 7 S. W. Rep. 724.

[2] Peters v. Cartier, *supra*. In the late Iowa and Oregon cases cited above the subject is fully discussed, and the foregoing view of the law ably maintained. It is not error to refuse to submit to the jury the issue of good faith where the defendant's deed is only a quitclaim. Hancock v. Tram Lumber Co., *supra*.

[3] Chapman v. Sims, 53 Miss. 163, reviewing and analyzing decisions of that State, and of the U. S. Supreme Court supposed to hold the contrary. See also, Cutler v. James, 64 Wis. 173, 24 N. W. Rep. 824, 54 Am. Rep. 603, and the other cases cited in note 13 *post*, in which, though the decision in favor of the quitclaim purchaser is rested in part on a construction of the statutes, the view that such deed does not impute bad faith or charge notice is fully maintained.

[4] Rego v. Van Pelt, 65 Cal. 254, 3 Pac. Rep. 867; Johnston v. Williams, 37 Kan. 179, 14 Pac. Rep. 537, 1 Am. St. Rep. 243; Barclift v. Little, 82 Ala. 319, 2 South. Rep. 120; Utley v. Fee, 33 Kan. 683, 691; Potter v. Tuttle, 22 Conn. 512; Kyle v. Kavanaugh, 103 Mass. 356; Gasley v. Price, 16 Johns. 267. A quitclaim will convey covenants of warranty in the deeds ahead, or other covenants that run with the land. Johnston

quitclaim is as effectual to divest and convey full title as any other form of conveyance.[4] In this respect there is, in the United States, no difference between deeds by the several forms of gift, grant, bargain and sale or release and quitclaim, and the subtle distinctions that anciently obtained are practically abolished. The law now looks to the intent of the parties rather than to the form of its expression;[5] and that the grantor in a quitclaim intends to sell merely a claim of title, and the grantee to waive his right to protection against unrecorded and unknown conveyances, are assumptions not warranted by the terms of the instrument. Parties have the right to make their contracts of sale in any lawful form they may choose. Quitclaim deeds are now of very common use, and the terms "right title and interest," as descriptive of the subject-matter of the conveyance, are specially appropriate where the interest of the grantor is itself an equitable title, or a less estate than the fee, or an undivided interest in the property. Covenants of warranty are but a superadded contract, and are not in any case essential to the instrument as a conveyance.[6] If it be said that the absence of such covenant shows that the seller had doubts of the title, it may be answered as well that it shows also that the purchaser was without doubt, and hence willing to rely and did rely on the title alone; and that the requirement of a warranty in itself implies a doubt of the title.[7] Where the grantor has already conveyed, the title is not in him, and it is not his deed alone, whatever its form, that makes a title, for the subsequent purchaser from him; but the latter gets the superior right for the reason that as the title was apparently in the grantor, he was justified, having no actual notice to the contrary, in assuming that what was thus apparently true, was true in reality, and hence is entitled to protection against one who has been guilty of *laches* in not recording his prior conveyance.[8] The buyer determines as to the title from the records where the law requires it to be shown. Was the title apparently in the grantor, and would the conveyance have divested it out of him had it been there? If so, the grantee who is without actual notice is fully entitled to protection, whatever be the form of his conveyance; and it is inconsistent to hold a quitclaim to be a regular mode of conveying full title, and at the same time hold that it implies a lack of such title.

The Question as Affected by Statute.—Where conclusions thus directly opposed to each other are supported by an almost equal force of reasoning, the true criterion of determination will usually be found to lie in some middle ground; and in searching for this, it will be well to notice first how far and in what respects the subject is affected by statutes. Those bearing on the question are of two kinds, the recording acts, and the statutes of conveyances; and in several States the decisions in favor of the quitclaim purchaser are predicated on the effect of these statutes. In perhaps a dozen States the statute relating to conveyances provides that a deed of quitclaim and release in the common form shall be sufficient to pass all estate that could be lawfully conveyed by deed of bargain and sale.[9] Under the common law a quitclaim had effect only to enlarge some estate or interest already in the releasee; but the American courts have from the earliest time, and without the aid of statute, usually given full effect to its operation in divesting and transferring title.[10] As the rule was other-

v. Williams, *supra;* Scoffins v. Grandstaff, 12 Kan. 467; and so will a deed under execution or decretal sale. Hunt v. Orwig, 17 B. Mon. 73; Young v. Triplett, 5 Litt. (Ky.) 121; Thomas v. Bland (Ky.), 11 L. R. A. 240, 14 S. W. Rep. 955.

[5] The intention of the parties is the polar star by which courts are always to be guided in the construction of contracts by deed or otherwise. Butterfield v. Smith, 11 Ill. 485; Jackson v. Fish, 10 Johns. 456; Pray v. Pierce, 7 Mass. 381; Hall v. Ashby, 9 Ohio, 96, 34 Am. Dec. 424; Lynch v. Livingston, 6 N. Y. 422.

[6] Young v. Clippenger, 14 Kan. 148; Comstock v. Smith, 13 Pick. 116; Harrison v. Boring, 44 Tex. 255, 262. Nor will a *habendum* clause enlarge its character, see note 27 *post;* nor will a covenant to obtain patent and make full title render it an executory contract and not a conveyance *in præsenti*. Wholey v. Cavanaugh (Cal.), 25 Pac. Rep. 1112.

[7] Rawle on Covenants (4th ed), 35; Miller v. Fraley, 23 Ark. 743; Flagg v. Mann, 2 Sum. 562.

[8] Webb on Record of Title, § 154; Richardson v. Levi, 67 Tex. 359, 3 S. W. Rep. 444; Flagg v. Mann, *supra;* Snowden v. Tyler, 21 Neb. 199; Taylor v. Harrison, 47 Tex. 454, 26 Am. Rep. 304.

[9] Rev. Stats. Wis. (1878) § 2207; Rev. Code. Miss. (1880) § 1195; Rev. Stats. Ind. (1881) § 2924; Pub. Stats. Mass. (1882) ch. 120, §2; Gen. Stats. Minn. (1878) ch. 40, § 4; How. Stats. Mich. (1882) § 5653; Rev. Stats. Me. (1883) ch. 73, § 14; Dig. Fla. (1882) ch. 32, § 4; Hill's Ann. Laws Oregon (1887), § 3004.

[10] Kyle v. Kavanaugh, 103 Mass. 356; Branban v. Mayor, 24 Cal. 606; Bennett v. Irwin, 3 Johns. 363;

wise written in the common-law books, it is probable that such statutes are intended merely to place the American rule beyond question. This enlargement, however, of the effect of a quitclaim as a conveyance does not determine its character as charging notice; and the courts of Oregon and Minnesota have, with the better reason, held that such statute did not change the rule, judicially declared in those States, that a quitclaim purchaser was not entitled to protection.[11]

The recording acts usually provide, in terms or effect, that unrecorded conveyances shall be void as against a subsequent purchaser for valuable consideration and without notice; sometimes requiring further that the subsequent conveyance must be first of record. In several States "conveyance," as used in the recording acts, is defined by statute to embrace every instrument whereby any real estate or interest therein is aliened, created, incumbered or assigned;[12] and it is maintained that as a quitclaim is a conveyance, and may be recorded, it is therefore sufficient to entitle the purchaser to protection.[13] The manifest purpose of these registry statutes is to avoid conveyances, whatever be their form, if not recorded as required by law; but not to fix the character, as respecting notice and good faith, of the instrument under which the subsequent purchaser may claim. He must in all cases be a purchaser in good faith, and if the terms of a quitclaim, or any recitals in his deed not a quitclaim, are such as to reasonably put him on notice, he is not *bona fide*, nor within the protection of the law.[14] In two States, however, the statutes are so framed as to be decisive of the question. A comparatively recent statute of Minnesota expressly provides that the subsequent purchaser is entitled to protection though his deed be a quitclaim of the form in common use;[15] and in Wisconsin the statutory provisions enlarging the effect of a quitclaim are so full and extended as to elevate a mere deed of quitclaim into one of bargain and sale.[16] But if, aside from this Minnesota statute, the recording acts are, in and of themselves, decisive of the question of protection under them, irrespective of the form of conveyance, then the rule should apply in all the States, for, as affecting this feature, there is no substantial difference in their terms or in their general intent. A quitclaim purchaser may be justly entitled to protection on the intrinsic merits of the matter, but that the registry acts, *ex vi termini*, accord it to him, is a position not tenable, and its advocates have been unable to show by any cogent reasoning that such is their intent or proper legal effect.[17] These decisions, however, are entitled to full consideration in so far as they maintain the equity of a quitclaim purchaser, and his right against being absolutely precluded by the form of his conveyance.

The True Criterion that of Intention and Actual Good Faith.—The construction that a quitclaim charges the purchaser with bad faith absolutely and as a presumption of law not rebuttable is an extreme one, and establishes an arbitrary rule for which there is no just occasion. The intention of the parties and the actual good faith of the purchaser are the controlling elements in the matter, and there is no substantial reason why the courts should not here, as in other cases of

Kerr v. Freeman, 33 Miss. 292; Rowe v. Beckett, 30 Ind. 154; Hall v. Ashby, 9 Ohio, 96, 34 Am. Dec. 424; Ely v. Stannard, 44 Conn. 529, and cases in note 4 *ante*.

[11] Baker v. Woodward, 12 Oreg. 3, 6 Pac. Rep. 173; Marshall v. Roberts, 18 Minn. 405. 10 Am. Rep. 201; Martin v. Brown, 4 Minn. 282; and see also, Snow v. Lake, 20 Fla. 656, 1 Am. St. Rep. 625.

[12] Rev. Stats. Wis. §§ 2241, 2242; Hittell's Cal. Codes, §§ 6212, 6215.

[13] Cutler v. James, 64 Wis. 173, 24 N. W. Rep. 824, 54 Am. Rep. 603; Brown v. Banner Oil Co., 97 Ill. 214, 37 Am. Rep. 105; Graff v. Middleton, 43 Cal. 340; Allison v. Thomas, 72 Cal. 562, 1 Am. St. Rep. 89; Munson v. Ensor, 94 Mo. 566, 7 S. W. Rep. 108; Fox v. Hall, 74 Mo, 315; 41 Am. Rep. 316; Sharp v Cheatham, 88 Mo. 510; McConnell v. Reed, 4 Scam. 117, 38 Am. Dec. 124. "A purchaser for value by quitclaim deed is as much within the protection of the registry act as one who becomes a purchaser by warranty deed. This is the clear effect of the statutes, and the courts have no power to repeal them." Munson v. Ensor, *supra*.

[14] Webb on Record of Title, §§ 178-181, citing Cambridge Bank v. Delano, 48 N. Y. 326; McPherson v. Rollins, 107 N. Y. 310, 14 N. E. Rep. 411, 1 Am. St. Rep. 826, and many other cases.

[15] Strong v. Lynn, 38 Minn. 315, 37 N. W. Rep. 448, citing Gen. Stats. 1878, §§ 4, 21.

[16] Cutler v. James, 64 Wis. 173. The statute provides (§ 2207), that a quitclaim shall pass all the estate that the grantor could lawfully convey; and also (§ 2208), that it shall have the effect of a conveyance in fee simple of all the right, title and estate of the grantor, either in possession or expectancy.

[17] The statutes in no way affect the question. Granger J. in Steele v. Sioux Valley Bank, 79 Iowa, 339.

contract, give effect to this intention, and place a purchaser by quitclaim within the protection of the recording acts where the facts may so warrant. The prior purchaser, or party at interest, is in default in not having put on record the evidence of his right, and where the subsequent purchase is in fact made in good faith and for fair value, he can have no just concern in the mere form of the instrument evidencing it; nor should the courts assume, because of this matter of form, to exclude from the broad policy and equitable protection of the registry acts one who has in good faith relied upon the records as the law invites him to do. The question of good faith in fact necessarily arises in all cases of subsequent purchase, whatever be the form of conveyance, as this is requisite to defeat the prior right.[18] That the subsequent purchaser has taken a quitclaim may properly be looked to as a significant circumstance in determining this matter of good faith, but where it is satisfactorily shown that he purchased *bona fide* and for value, he is entitled to protection. This doctrine is distinctly established in at least one State, and in many others the current of judicial opinion is strongly in this direction. In those States whose courts accord protection to the quitclaim purchaser, resting it on the terms of their statutes, the decision is in fact largely based upon, and necessarily inclusive of, this principle; for when a quitclaim is placed on the same footing with other deeds, the question of good faith in fact still remains a controlling element in the case.

The Correct Rule.—Perhaps the clearest statement of the true rule that has been made is to be found in recent decisions of the Kansas court, holding that the quitclaim form of deed does not alone conclude the grantee, nor prevent him from being a purchaser in good faith. It simply operates as a warning to him and puts him on inquiry. If he then uses all reasonable means to ascertain the real condition of the title, and finds nothing adverse, and pays valuable consideration in good faith, he is entitled to protection.[19] Recent decisions in Alabama and Indiana substantially apply these principles to the cases at bar;[20] and judicial expressions in the Nebraska cases are clearly in this direction,[21] although in that State, as also in Georgia,[22] no definite rule on the subject has yet been declared. It is worthy of remark that in almost every State in which the rule against the quitclaim obtains, the line of decisions is fluctuating, and the courts find it necessary to "distinguish" cases to avoid an apparent conflict of decision; and that they are usually willing, if possible, to avoid holding the presumption of notice and bad faith absolutely conclusive.

Where the Deed is not Purely a Quitclaim.—The rule that a quitclaim charges notice is limited to instruments that are purely quitclaim. Where the deed itself contains evidence that the absolute right to the land and not the title or the chance of the title is

[18] And the burden of proof to show payment and want of notice is usually held to be on the junior purchaser. Wood v. Rayburn, 18 Oreg. 3, 22 Pac. Rep. 521; Buchanan v. Wise, 28 Neb. 312, 44 N. W. Rep. 458; King v. Hailey, 75 Tex. 163, 12 S. W. Rep. 1112; Spicer v. Waters, 65 Barb. 227; Webb. on Record of Title, § 204; Root v. Bryant, 57 Cal. 48; though other courts deny the rule as to the burden of proof. Anthony v. Wheeler, 130 Ill. 128, 17 Am. St. Rep. 281, 22 N. E. Rep. 494; Hiller v. Jones, 66 Miss. 636, 6 South. Rep. 465; Marshall v. Dunham, 66 Me. 539; Roll v. Rea, 50 N. J. L. 264, 12 Atl. Rep. 905; Cutler v. James, 64 Wis. 173.

[19] Merrill v. Hutchinson, 25 Pac. Rep. 215. Other Kansas cases, while presenting somewhat more strongly the view that is against the quitclaim purchaser, are not in conflict with the rule stated in this latter case. See Goddard v. Donaho, 42 Kan. 754, 22 Pac. Rep. 708; Johnston v. Williams, 37 Kan. 179; 14 Pac. Rep. 537, 1 Am. St. Rep. 243; Hutchinson v. Hartman, 15 Kan. 133.

[20] Barclift v. Little, 82 Ala. 319, 2 South. Rep. 120; Fleetwood v. Brown, 109 Ind. 571, 11 N. E. Rep. 789, citing Dodge v. Briggs, 27 Fed. Rep. 166, 167. See also Fletcher v. Ellison, 1 Tex. Un. Cas. 661; Knapp v. Bailey, 79 Me. 164, 9 Atl. Rep. 122; Mansfield v. Dyer, 131 Mass. 200; Snowden v. Tyler, 21 Neb. 199, 31 N. W. Rep. 661.

[21] A quitclaim occurring in the chain of title and made to supply an alleged lost deed, held not to deprive the subsequent owner of protection. "We are not prepared to hold that a quitclaim, where the grantor has already conveyed, will not in any case convey title. It is the policy of the law that the records should show the title, and that a purchaser in good faith relying thereon should be protected." Snowden v. Tyler, 21 Neb. 199, 31 N. W. Rep. 661. But he must make a clear case of *bona fides* before his title will be sustained. Hoyt v. Schuyler, 19 Neb. 657, 28 N. W. Rep. 306. In Hastings v. Nissen, 31 Fed. Rep. 597, Judge Brewer says the rule is not settled in Neb., and hence, in the case at bar he follows the rule of the U. S. Supreme Court—as in May v. Le Clair, 11 Wall. 217, and cases in note 1 of this article.

[22] Hockenhull v. Inman, 80 Ga. 89, 12 Am. St. Rep. 235, 4 S. E. Rep. 323.

[23] Van Rensselaer v. Kearney, 11 How. 322; Lynch v. Livingston, 6 N. Y. 422; Harrison v. Boring, 44 Tex. 255.

sought to be sold and bought, the purchaser may be *bona fide* notwithstanding the deed may have in some other respects the qualities of a quitclaim.[23] If the wording of the instrument is such as to raise a question whether it is a quitclaim or not, the adequacy of the price given and all the circumstances under which it was made tending to show its intent and purpose, may be shown and considered to fix its character.[24] The use of the term "quitclaim" will not of itself render the instrument a quitclaim deed. The words "right, title and interest" are held to be the most significant in this connection, as showing that it was not the intention to convey the property itself but only the grantor's chance of title or claim therein;[25] and where the subject-matter of the conveyance is thus described, it is said that the use of "grant, bargain and sell," in connection with, or instead of, "remise, release and quitclaim," will not prevent the deed from being a quitclaim.[26] The entire instrument will be considered, and its terms, clauses and recitals construed in connection with each other to determine its character.[27]

Other Distinctions and Exceptions.—An exception to the rule that a quitclaim charges the purchaser with notice is recognized in the case of deeds made by persons acting in official and fiduciary capacities. In these cases the seller merely passes the title in the discharge of a legal duty, and the buyer, on grounds of public policy, is not to be charged with bad faith by the form of the conveyance.[28]

Where the property is not specificially described in a quitclaim, but consists of different lots, parcels or tracts, designated by general description only, the instrument will not convey such portions thereof as the grantor may have previously conveyed by deeds not recorded. In such case it may be fairly assumed, in the absence of a distinct specification of the lots and tracts, that the grantor intended to convey only such as he then really owned, or supposed he had right to convey, and that his "interest" in the property was intended to refer exclusively to these, and not to any that he had already conveyed.[29]

Quitclaim Back in the Chain of Title.—Where a quitclaim is held to charge notice, the effect of such a deed back in the chain of title, the owner holding directly under deed of bargain and sale, has not been clearly determined by the courts. In several late cases the point is alluded to as presenting a question, but it is left undecided.[30] In one case, however,[31] where the defendant held immediately under the usual form of warranty deed, it was decided that he was a purchaser in good faith, and took the property clear of a prior conveyance ahead of his grantor, who

[24] Sweet v. Green, 1 Paige Ch. 473; Taylor v. Harrison, 47 Tex. 454, 26 Am. Rep. 304; Richardson v. Levi, 67 Tex. 359, 3 S. W. Rep. 444.

[25] Hope v. Stone, 10 Minn. 141; Cummings v. Dearborn, 56 Vt. 441; Frey v. Clifford, 44 Cal. 340; Garrett v. Christopher, 74 Tex. 453, 15 Am. St. Rep. 850, 12 S. W. Rep. 67 and Texas cases next above cited. But in Dow v. Whitney, 147 Mass. 1, 16 N. E. Rep. 722, it is said that a deed of the right title and interest of the grantor in a lot of land conveys the same title as a deed of the land.

[26] Richardson v. Levi, *supra*.

[27] A *habendum* clause, to have and to hold the said premises unto the said grantee, his heirs and assigns forever, can not extend the subject matter of the grant, and if the deed is otherwise a quitclaim, does not change its character. Smith v. Pollard, 19 Vt. 272; 4 Wash. Real Prop. 438; 4 Kent Com. 524; Brown v. Manter, 1 Foster, 528, Shephard v. Hunsacker, 1 Tex. Un. Cas. 578, 585. *Contra*, in Garrett v. Christopher, 74 Tex. 453, 12 S. W. Rep. 67, 15 Am. St. Rep. 850, it is held that such clause in a deed otherwise declared a quitclaim rendered it quite clear that the parties inte ed to convey the land itself.

[28] A purchaser by quitclaim from a trustee protected, the deed of trust being with warranty. Farguson v. Edrington, 49 Ark. 207, 216, 4 S. W. Rep. 763. A purchaser under execution protected; Woodward v. Sartwell, 129 Mass. 210; Dow v. Whitney, 147 Mass. 1, 16 N. E. Rep. 722; Roberts v. Bourne, 23Me. 165, 39 Am. Dec. 614; Webb on Record of Title, § 212.

[29] Fitzgerald v. Libby, 142 Mass. 235, 7 N. E. Rep. 917; Aqueduct Corporation v. Chandler, 9 Allen, 159; McConnell v. Reed, 4 Scam. 117, 38 Am. Dec. 124; Adams v. Cuddy, 13 Pick. 460, 25 Am. Dec. 330; Brown v. Jackson, 3 Wheat. 449; Hamilton v. Doolittle, 37 Ill. 473; Morgan v. Clayton, 61 Ill. 40. As where A owned 80 acres and laid out on it a town plat and sold lots, and then made a release of all his right and title to the tract. McConnell v. Reed, *supra*. "The land must be embraced within the description given in the quitclaim, and on the face of the quitclaim." Brown v. Banner, Coal Oil Co., 97 Ill. 214, 37 Am. Rep. 105. A quitclaim "of all remaining interest" is not good against a prior unrecorded deed. Callahan v. Merrill (Iowa), 46 N. W. Rep. 753; even though the quitclaim describes the land, Eaton v. Trowbridge, 38 Mich. 454, 460. See as to other limitations, Ingalls v. Newhall, 139 Mass. 268; Towle v. Ewing, 23 Wis. 336, 99 Am. Dec. 179; Lunt v. Lunt, 71 Me. 377; Webb on Record of Title, §§ 27, 183 and notes.

[30] See Gress v. Evans, 1 Dak. 387, 46 N. W. Rep. 1132.

[31] Fletcher v. Ellison, 1 Tex. Un. Cas. 661, 672.

held by quitclaim, and who was therefore charged with notice, though without notice in fact. The reason of the matter is not stated, and it does not appear how the decision is to be sustained in principle. A purchaser must take notice of the instruments constituting his chain of title, and is charged with a knowledge of their character, terms and recitals;[32] and if he is affected with notice, he cannot convey the property clear to another who is likewise affected with the same notice.[33] If the notice charged by a quitclaim is to be considered absolute and irrebuttable, the rule cannot be consistently maintained without holding that each subsequent purchaser in the line of that title takes subject to the notice. As already stated, however, the courts when squarely confronted with the issue are not disposed to hold that the presumption of notice is absolute; and to this may be attributed the decision in favor of the defendant who was himself *bona fide* in fact, despite the quitclaim in his chain of title. His actual good faith would in principle equally entitle him to protection, though he held directly under the quitclaim.[34]

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[32] Gibert v. Peteler, 38 N. Y. 165, 97 Am. Dec. 785; Dean v. Long, 122 Ill. 447, 14 N. E. Rep. 34; Webb on Record of Title, § 221, note.

[33] Ormsby v. Budd, 72 Iowa, 80, 33 N. W. Rep. 457; Webb on Record Title, § 156.

[34] Under statutes allowing a defendant the value of his improvements on the land, a quitclaim, while bearing on the question of good faith, is not conclusive of it. Griswold v. Bragg, 19 Blatchf. 94, 6 Fed. Rep. 342; White v. McGarry, 2 Flip. 572. In Maine and Massachusetts the rule with respect to a subsequent purchaser's right against a prior deed or equity is that a quitclaim is only a circumstance bearing on the question of notice and *bona fides*. Knapp v. Bailey, 79 Me. 164, 9 Atl. Rep. 122; Mansfield v. Dyer, 131 Mass. 200.

REAL ESTATE BROKERS — RIGHT TO COMMISSIONS.

ANDERSON V. SMYTHE.

Court of Appeals of Colorado, December 3, 1891.

Where the evidence shows that defendant made plaintiff his agent to sell land, but did not preclude himself from selling it in person, and plaintiff informs one T of the land being for sale, but does not disclose the owner's name, and afterwards T learning—but not through plaintiff—that defendant is the owner, purchases directly from him, without the latter knowing that plaintiff has had any connection with the sale, plaintiff was not the procuring cause of the sale, and cannot recover commissions.

REED, J.: Plaintiff in error was plaintiff below, and brought suit against the defendant to recover the sum of $137.50 alleged to be due as commission upon the sale of two building lots in the city of Denver. The property was sold by the owner, the defendant. It is conceded that, prior to the sale, plaintiff and defendant had a conversation in which defendant agreed to pay the regular commissions if the plaintiff sold the property for $3,000. The property was sold for $2,900; and that $137.50 was the regular commission upon that sum is not disputed. The property was purchased by parties named Taber and Burton. The evidence established the fact that the plaintiff called the attention of Taber to the property in the first instance, by asking Taber's opinion in regard to the value of the property, and suggesting that he (plaintiff) and another thought of buying it, afterwards informing him (Taber) of their inability to buy, and proposing to sell to him, and as an inducement offered to divide with him the commission. This appears to have been all that occurred between them. Taber associated Burton with himself in the purchase, and bought the lots directly from the defendant. The name of the owner of the property was not communicated by the plaintiff, nor was defendant informed by Taber that he had had anything whatever to do with plaintiff in connection with the property; neither did the plaintiff inform the defendant of any attempt by him to sell to Taber until after the sale was made by the defendant, at the time he claimed a commission upon the sale. There was no evidence that the defendant, at the time he placed the property in the hands of the plaintiff for sale, precluded himself from selling it in person. The case was tried to the court without a jury, and judgment for the defendant. Considerable testimony was received, some of it rather contradictory.

It is assigned for error—First, that the court excluded evidence offered on the part of the plaintiff; second, the court erred in admitting evidence offered on the part of the defendant, objected to by the plaintiff. These supposed errors cannot be regarded by the court. We find in the record no objections entered or exceptions saved, nor is our attention called to any evidence, the admission or rejection of which is supposed to be erroneous. The other two assignments of error are general,—that the court erred in finding for the defendant. There is an able and carefully prepared brief and argument filed on the part of the plaintiff; no appearance for the defendant.

It is contended that the court erred in the law controlling the case, and many authorities are cited in support of the contention. The law is well settled in this State that "when an agent produces a purchaser acceptable to the owner, and able and willing to purchase on terms satisfactory to the owner, the agent has performed his duty," and is entitled to the commission. Finnerty v. Fritz, 5 Colo. 174; Buckingham v. Harris, 10 Colo. 455, 15 Pac. Rep. 817. The rule is well

defined and stated to be that the agent is entitled to his commission "where the sale really proceeds and is effected through the acts of the agent, though he did not negotiate the sale." Stewart v. Mather, 32 Wis. 344; Lincoln v. McClatchie, 36 Conn. 136; Cook v. Fiske, 12 Gray, 491. "If the agent introduces the purchaser or discloses his name to the seller, and through such introduction and disclosure negotiations are begun, and a sale of the property is effected, the agent is entitled to his commission, although the sale be made by the owner." Bell v. Kaiser, 50 Mo. 150; Jones v. Adler, 34 Md. 440; Bash v. Hill, 62 Ill. 216; Lloyd v. Matthews, 51 N. Y. 124. The latter case carries the doctrine of right of compensation to the broker as far or further than any other case found. It is stated by Lott, J., to be: "It is sufficient to entitle a broker to compensation that the sale is effected through his agency as its procuring cause: and if his communications with the purchaser were the cause or means of bringing him and the owner together, and the sale resulted in consequence thereof, the broker is entitled to recover." In Sussdorff v. Schmidt, 55 N. Y. 319, the rule was also carried to the extreme limit; but it is there said by Church, C. J.: "A person claiming a commission upon a sale of real estate must show an employment, and that the sale was made by means of his efforts or agency; * * * and, although he employs one or more brokers, he may negotiate and sell the property himself without liability to any one for commissions." In regard to the correctness of these principles, there can be no question; but to render them applicable and available the principal fact must be found,—that the parties were brought together, and the transaction made possible, by the instrumentality of the agent. This fact was evidently found against the plaintiff by the court, and under the evidence the court was probably justified in its finding. The parties were not brought together by the agent. The name of the owner was not disclosed to Taber by the agent, nor did he inform the defendant that Taber was a possible purchaser; nor did Taber inform the defendant that the plaintiff had any connection with the transaction whatever. In McClave v. Paine, 49 N. Y. 563, the court, by Grover, J., uses the following language: "His commission is earned by finding a sufficient purchaser, ready and willing to enter into a valid contract for the purchase upon the terms fixed by the owner, and, having introduced such a one to the owner as a purchaser, is not deprived of his right to commission by the owner negotiating the contract himself. Lyon v. Mitchell, 36 N. Y. 235; Barnard v. Monnot, 42 N. Y. 203; Moses v. Bierling, 31 N. Y. 462; Redfield v. Tegg, 38 N. Y. 212. In the present case the plaintiff did not introduce Blodgett as a purchaser of the parcel in question. So far as appears, he had no knowledge that he would purchase it upon any terms." This case is cited with approval in Sussdorff v. Schmidt, *supra*, which, as stated, may be considered an extreme case. It is apparent that the court in neither Lloyd v. Matthews nor Sussdorff v. Schmidt did or intended to overrule or modify McClave v. Paine, Lyon v. Mitchell, Barnard v. Monnot, Moses v. Bierling, or Redfield v. Tegg, and these assert the necessity of the agent having directly brought the parties together; the language of Grover, J., being, "and having introduced such a one to the owner as a purchaser;" again, "In the present case the plaintiff did not introduce Blodgett as a purchaser of the parcel in question." In that case, as well as the former cases cited and relied upon in that opinion, great stress is laid upon the introduction, the bringing of the parties together, and the statement by the agent to the owner that the party was a probable purchaser; and this is required by the decisions of other States, generally. Less than this, certainly, could not entitle an agent to a commission. The principal should at least know from the agent of his (the agent's) participation in the transaction. The rule in regard to the right of the agent to compensation has been stretched in some courts to its utmost tension, and should, if possible, be restricted, not enlarged. While the agent should in all cases be entitled to payment of commissions honestly earned, the owner of property should not be at the mercy of an agent of whose pretended participation he had no knowledge whatever.

The decision of this case was dependent upon the finding of the facts, under the rules of law as above stated. There was no great conflict in the testimony, and the evidence was sufficient to warrant the finding. As said by Church, C. J., in Sussdorff v. Schmidt, *supra*, " it is not our province to pass upon the facts." Under the circumstances of this case the finding of the facts by the court are conclusive upon us. The judgment should be affirmed.

NOTE.—The authorities support the principal case in holding that, in order for the broker to recover his commissions, two things are necessary: 1st, an employment either in the outset or by adoption of the acts of the broker: Earp v. Cummins, 54 Pa. St. 394; Keys v. Johnson, 68 Pa. St. 42; Chilton v. Butlar, 1 E. D. Smith 150; Article "Real Estate Brokers," 26 Cent. L. J. 75. 2d, the broker must be "the procuring or moving cause of sale," or must actually have sold: "Real Estate Broker's Compensation," 20 Cent. L. J. 466; Doonan v. Ives, 73 Ga. 295; Earp v. Cummins, *supra*; Pratt v. The Bank, 12 Phila. (Pa.) 378; Wylie v. Marine Nat. Bk., 61 N. Y. 415; Lloyd v. Matthews, 51 N. Y. 124; Armstrong v. Wann, 29 Minn. 126; "Real Estate Brokers," 26 Cent. L. J. 75; Keys v. Johnson, *supra;* Chilton v. Butlar, *supra*. The purchaser produced must be ready, willing and able to enter into the contract on the terms of the employer: Wylie v. Marine Nat. Bk., *supra;* Sievers v. Griffin, 14 Ill. App. 63; Pratt v. Hotchkiss, 10 Bradw. 603; Cassady v. Seely, 29 N. W. Rep. 432; Duclos v. Cunningham, 102 N. Y. 678. When such a purchaser is produced the broker is not deprived of commissions because the owner makes bargain and closes sale: Dolan v. Scanlan, 57 Cal. 261; "Real Estate Brokers," 26 Cent. L. J. 75; Armstrong v. Wann, *supra;* Jones v. Berry, 37 Mo.

App. 125; Graves v. Bains, 78 Tex. 92, 14 S. W. Rep. 256.

Thus far the judges in the principal case agree, but Justice Bissel, in a dissenting opinion (see 28 Pac. Rep. 480), holds the broker in this case to have been the moving or procuring cause, since the purchaser was found by the efforts of the broker and through his instrumentality, and that the introduction of purchaser and owner is entirely unnecessary, if broker was the moving cause of sale. It has been held that when the purchaser, after having been sent to view the property, did not return, but acting on information subsequently acquired from other sources, went to the owner and closed the trade, the broker was entitled to his commissions: Hangford v. Shampter, 4 Daily, 243. If the mere introduction of the property to the notice of the buyer, as per advertisement, effects the sale that is sufficient to entitle to commissions: Earp v. Cummins, 54 Pa. St. 397. On the other hand it is held that merely putting the purchaser on the track of the property does not entitle the broker to commissions. The buyer and seller must be in some way brought together or into communication: Sievers v. Griffin, 14 Ill. App. 63. But the purchaser need not be known to the owner as the broker's customer in order that broker may recover: Hangford v. Shampter, 4 Daily, 243; Pope v. Beals, 108 Mass. 561; Millan v. Porter, 31 Mo. App. 563. If broker is the means of bringing the parties together he is entitled to commissions (Shepherd v. Hadden, 26 N. J. L. 334), however slight his services: Derrickson v. Quimby, 43 N. L. J. 373; so if he furnish information to a third party, who informs purchaser, and purchaser closes with principal: Lincon v. McClatchie, 36 Conn. 137; Pope v. Beals, *supra*. It is not indispensable that purchaser should be introduced by broker: Wylie v. Marine Nat. Bk., 61 N. Y. 415, 417.

When broker has commenced negotiations, owner cannot take matters into his own hands, complete the transaction and then refuse compensation to the broker: Keys v. Johnson, 68 Pa St. 43; Chilton v. Butlar, 1 E. D. Smith, 150; Martin v. Sillman, 53 N. Y. 615; Briggs v. Rowe, 1 Abb. Ct. App. Dec. 189. But when the broker opens negotiations and failing to bring the party to terms abandons negotiations, and owner subsequently makes sale to same party at same terms the broker is entitled to no commission: Wylie v. Marine Nat. Bk., *supra*; White v. Twichings, 26 Hun, 503. When the broker has procured a proper purchaser and the sale is prevented through failure or imperfection of the owner's title, the broker being ignorant of such imperfection, the broker will be entitled to his commissions: Cheatham v. Yarbrough (Tenn.), 15 S. W. Rep. 176; Kyle v. Rippey (Oreg.), 26 Pac. 308; Fiske v. Soule, 87 Cal. 313; Article 16 Cent. L. J. 442. Broker is entitled to *pro rata* commissions when part of property is sold, or all at a less price: Woods v. Stephens, 46 Mo. 555; Lawrence v. Atwood, 1 Ill. App. 117. Placing property in broker's hands does not prevent owner selling, free of commissions, to a purchaser not procured by the broker: Wylie v. Marine Nat. Bk., *supra;* Armstrong v. Wann, *supra*; Dolan v. Scanlon, 57 Cal. 261; Hungford v. Hicks, 39 Conn. 259; Chilton v. Butlar, 1 E. D. Smith, 150; "Commissions of Real Estate Agents," 16 Cent. L. J. 442; Waterman v. Boltinghouse, 23 Pac. Rep. 195, 82 Cal. 659. This is the case, even when exclusive power to sell is given: Dole v. Sherwood, 5 L. R. A. 720, 41 Minn. 535, 43 N. W. Rep. 569. But see *contra*, Carle v. Parent, Montreal L. Rep. 5 Q. B. 451.

For discussion of this whole subject see "Commissions of Real Estate Agents," 16 Cent. L. J. 442; "Real Estate Broker's Compensation," 20 Cent. L. J. 466; "Real Estate Brokers, Their Right to Commission," 22 Cent. L. J. 126; "Real Estate Brokers," 26 Cent. L. J. 75, 30 Cent. L. J. 112.

ROBERT W. DUNCAN.

St. Louis, Mo.

BOOK REVIEWS.

LAWYERS' REPORTS, ANNOTATED, Book 12.

This volume is entitled to the same praise we have heretofore taken pleasure in bestowing upon this series of reports. We find it full of good cases and exhaustive annotations. In the midst of so many it is difficult to make special mention, but we would fail of our duty if we neglected to make mention of the very excellent note to the case of Lee v. Fletcher (Minn.), on the subject of delivery of deeds. The note is as full on the topic as any text-book, and has an advantage over the latter in the attention given to the latest decisions. Those interested in conspiracies for the purpose of boycotting will find the subject exhaustively reviewed in the note to the case of Casey v. Cincinnati Typographical Union. The question of election by widow as between inconsistent rights by will is discussed in note to case of Estate of Vance (Penn.), and the subject of specific performance in note to case of Frink v. Thomas (Oreg). The note to the case of Waller v. Bowling (N. C.), is interesting on the subject of how far tenant in common is liable for trover and conversion, showing the holdings of the different States thereon. Expert and opinion testimony is the subject of the note to Dresler v. Hard (N. Y.)

CHAPLIN ON SUSPENSION OF THE POWER OF ALIENATION.

The ancient common law of perpetuities was abandoned in New York some sixty years ago, and an entirely new system adopted which has been followed in the main by the States of Michigan, Minnesota and Wisconsin. The radical changes thus introduced rendered obsolete most of the old literature on the subject, and has created a demand for a modern work upon the modern topic. This is the first and only complete work on the subject of which it treats, which includes within its scope the postponement of vesting. The book gives a complete and systematic statement of the law on the subjects of suspension occasioned by contingencies, by express trusts, and by powers, postponement of vesting, suspension of the absolute ownership of personal property, gifts to charitable corporations, equitable conversion and the principles of construction in connection with the subject of vesting and suspension. An appendix contains corresponding statutes concerning suspension in the States of California, Idaho, Indiana, Iowa, Kentucky, North and South Dakota, in the construction of which many of the principles discussed in this work will be found applicable. The book is of great value in the determination of questions arising in connection with the settlement of property and the drawing of wills and deeds. There is a good index, and the volume is prepared in first-class style, by the publishers, Baker, Voorhis & Co., New York.

INTERSTATE COMMERCE LAW, ANNOTATED.

This book of something over a hundred pages will be of good use to those having any interest in the

work of the Interstate Commerce Commission. It is intended to convey to such an understanding of the practical workings of the latter body. The author is John Theo. Wentworth, of the Wisconsin Bar, and a former law clerk of the commission, who appears to be well qualified for the task. It is bound in cloth, and published by T. H. Flood & Co., Chicago.

BOOKS RECEIVED.

AMERICAN STATE REPORTS, Containing the Cases of General Value and Authority, Subsequent to Those Contained in the "American Decisions" and the "American Reports," Decided in the Courts of Last Resort of the Several States, Selected, Reported, and Annotated. By A. C. Freeman and the Associate Editors of the "American Decisions." Vol. 22. San Francisco: Bancroft-Whitney Company, Law Publishers and Law Booksellers. 1891.

THE STUDY OF CASES. A Course of Instruction in Reading and stating Reported Cases, composing Head-notes and Briefs, criticising and comparing Authorities, and compiling Digests. By Eugene Wambaugh, Professor in the Law Department of the State University of Iowa. Boston: Little, Brown & Company. 1892.

QUERIES.

QUERY NO. 3.

Somewhere in the Federal Supreme Court Reports the following language, in substance, is used: "There seems to be an opinion prevalent that parties prospecting for mines have a right to go upon deeded land in search of mineral. This opinion is entirely erroneous, and it hardly seems necessary to combat the same, except for the fact that such unfounded opinion is sometimes held." Can any one cite the case?

L.

HUMORS OF THE LAW.

To Officer; "What is this man charged with?"
"Bigotry, yer honor."
"Bigotry? Why, what's he been doing?"
"Married three women, yer honor."
"Three! That's not bigotry, that's trigonometry."

Witness: "From the evidence I really don't see on what ground you base your hopes of a disagreement."

Lawyer: "Why, man, the jury is composed of experts."—*New York Sun.*

"Keene has come into a fine thing by the death of old Bilyuns."
"Indeed! Is he one of the heirs?"
"No; he is the executor."—*New York Press.*

A New Zealand chief had taken up his residence upon a piece of land, his right to which was contested. "I have an undeniable right to the property," he observed, "as I ate the preceding owner."—*Law Journal.*

CURIOUS CORONERS' VERDICTS.

"The body was so mangled and mutilate that tha could not tell enny thing about it but tha think it was put in the sisterne by some unknown person or persons."

"Diseas of the hart and applexity fitze."

WEEKLY DIGEST

Of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of the Supreme, Circuit and District Courts of the United States, except those that are Published in Full or Commented upon in our Notes of Recent Decisions.

1. ACCIDENT INSURANCE—Companies.—"Horse or vehicle policies," insuring an employer against liability for accidental injuries to others than employees, caused by horses or vehicles of the assured: "elevator policies," insuring against accidental personal injuries caused by elevators or their appurtances; "general liability policies," insuring against liability for accidental personal injuries to any persons other than employees, or persons injured by elevators, for which the assured may be liable as landlord or tenant; and "outside liability policies," insuring builders and contractors against liability for accidental personal injuries to workmen employed by other contractors, and to the public, caused by the assured or by his workmen—are "accident" insurance policies, within Acts 1887, ch. 214, § 29, cl. 5.—*Employers' Liability Assur. v. Merrill*, Mass., 29 N. E. Rep. 529.

2. ADMINISTRATION—Claims against Decedent's Estate.—An executor cannot pass upon his own claim against the decedent's estate, under Code Civil Proc. § 1510.—*In re Hildebrandt's Estate*, Cal., 28 Pac. Rep. 486.

3. ADMINISTRATION — Distribution — Priorities.—On a money rule in the superior court to distribute a fund raised by the sale of a decedent's property under a judgment obtained against him in his life-time, there being no evidence of the insolvency of his estate or of its insufficiency to pay all the debts against it, a judgment which was not dormant at the time of his death, but which was conceded at the trial to have become so afterwards, though older than a competing judgment, which is not dormant is not entitled to take the fund, or any part of it, as against such competing judgment.—*Colson v. Kennedy*, Ga., 14 S. E. Rep. 119.

4. ADMINISTRATION—Investments.—Investments, contrary to the requirements of the testator's will, upon mere personal security, are at the risk of the trustees, who must personally answer for any loss that may result from them.—*Brewster v. Demarest*, N. J., 23 Atl. Rep. 271.

5. ALTERATION OF NOTE — Liability of Surety.—The raising of the amount of a note by the maker at the request of the payee, and without the surety's knowledge, will not release the surety in a court having both law and equity powers, where the note as corrected conforms to the intent of all the parties.—*Bujahn v. McLean*, Ind., 29 N. E. Rep. 494.

6. APPEAL—Law of the Case.—Where, on motion for reargument, a decree is reaffirmed, it becomes binding not only on the court below, but also on this court, when the proceedings are reviewed on a subsequent appeal.—*Worthington v. Hiss*, Md., 23 Atl. Rep. 198.

7. APPEAL—Record.—A stipulation as to the testimony that should be considered by a trial judge does not thereby render such testimony a part of the record on appeal, within the requirement of Act 1890, § 4.—*Howard v. Ross*, Wash., 28 Pac. Rep. 526.

8. APPEARANCE—Effect.—Where a defendant appears and moves to quash the service of process for supposed defects therein, he thereby submits to the jurisdiction of the court, and thereafter it is too late to file a plea of personal privilege, to be sued in another county, where he resides.—*Carruthers v. Johnson*, Tex., 17 S. W. Rep. 1088.

9. ATTACHMENT—Dissolution.—A writ of attachment which has been improvidently issued may be set aside on the application of a judgment creditor of the defendant in attachment.—*National Papeterie Co. v. Kinsey*, N. J., 23 Atl. Rep. 275.

10. CERTIORARI TO JUSTICE COURT.—The issuance of execution against sureties on a forfeited claim bond by a justice of the peace does not operate as a judgment; and under Code, § 3405, providing that cases brought to the circuit court by *certiorari* from judgments of justices of the peace must be tried *de novo*, such action of the justice was properly ignored.—*Weedon v. Clark*, Ala., 10 South. Rep. 307.

11. CHECKS—Days of Grace.—An instrument in form of a check, which read: "100 Franklin Street. $200. Boston, Aug. 31, 1889. The National Revere Bank of Boston, pay to the order of Geo. H. Towle, Oct. 1, 1889, two hundred dollars. No. 9,288. [Signed] Samuel W. Creech, Jr."—was a check and was not entitled to grace.—*Way v. Towle*, Mass., 29 N. E. Rep. 506.

12. CONSTITUTIONAL LAW—Enactment of Statutes.—Const. art. 4, § 19, providing that no bill on its passage shall be so altered or amended as to change its original purpose, is not violated by increasing by amendment the localities where a local bill shall take effect.—*Henderson v. State*, Ala., 10 South. Rep. 332.

13. CONSTITUTIONAL LAW—Interstate Commerce—Merchants' License Tax.—Revenue Act N. C. § 22, requiring all merchants to pay "as a license tax one-tenth of one per centum on the total amount of purchases in or out of the State (except purchases of farm products from the producer), for cash or on credit," is not a tax on the privilege of purchasing goods, but on the goods themselves, as part of the general mass of property in the State, and does not, in its application to purchase outside the State, operate as an interference with interstate commerce.—*Ex parte Brown*, U. S. D. C. (N. Car.), 48 Fed. Rep. 435.

14. CONSTITUTIONAL LAW—Police Powers.—The ordinance of San Francisco granting to Charles Alpers the exclusive right to remove from the city limits all such dead animals, not slain for human food, as shall not be removed by the owner in person or by his immediate servant or employee, within 12 hours after the death thereof, and requiring the owner, if not intending to so remove it himself, to immediately deposit a notice of the death in a box provided for that purpose by Alpers, is a valid exercise of the police power, and is not open to objection as creating a monopoly, or as depriving persons of their property without due process of law.—*National Fertilizer Co. v. Lambert*, U. S. C. C. (Cal.), 48 Fed. Rep. 458.

15. CONTRACT — Construction — Joint Obligation. — Wherever an obligation is undertaken by two or more persons, the general presumption is that it is a joint and a several obligation; and this presumption is strengthened when the promisors have undertaken to accomplish together a single result. Such presumption is not defeated by the fact that each promisor is to contribute separately to the entire result for which they bargain, and is entitled to a distinct interest under the contract, for which he would have a separate remedy.—*Alpaugh v. Wood*, N. J., 23 Atl. Rep. 261.

16. CONTRACT—Damages.—Where one who has contracted to do a specific piece of work at an agreed price is prevented from doing so by the wrongful act of the other party, the measure of damages is the profit he would have made out of the transaction.—*Watson v. Gray's Harbor Brick Co.*, Wash., 28 Pac. Rep. 527.

17. CONTRACT — Duress. — Where defendant by such threats of arrest and imprisonment as would overcome the mind and will of an ordinary man compels a settlement which plaintiff would not have made voluntarily, plaintiff, even though guilty of embezzlement, may avoid such settlement on the ground of duress.—*Morse v. Woodworth*, Mass., 29 N. E. Rep. 525.

18. CONTRACT—Rescission.—In an action for breach of contract, where the answer sets up a mutual rescission of the contract, and there is some evidence that the contract was rescinded by parol, although such evidence is contradicted by that of plaintiff, it is error to refuse to instruct the jury that, if a parol agreement for the rescission of the contract was made by the parties, then they should find for defendant.—*Dignan v. Spurr*, Wash., 28 Pac. Rep. 529.

19. CONVEYANCE BY DIVORCED WIFE.—Where a person dies intestate, leaving as his only heirs at law his widow and minor children, and his widow marries, and afterwards, by agreement with her second husband, procures a divorce from him, and then conveys to a third person the land which came to her from her first husband, and remarries her second husband, whereupon the land is reconveyed to her, she holds such land by purchase, and not by virtue of her former marriage.—*Cook v. Claybaugh*, Ind., 29 N. E. Rep. 483.

20. CORPORATIONS—Stockholders.—Individual stockholders cannot question in judicial proceedings, the corporate act of directors, if the same are within the powers of the corporation, and in furtherance of its purposes, are not unlawful or against good morals, and are done in good faith, and in the exercise of an honest judgment. Questions of policy of management, of expediency of contracts of action, of adequacy of consideration not grossly disproportionate, of lawful appropriation of corporate funds to advance corporate interests, are left solely to the honest decision of the directors if their powers are without limitation, and free from restraint.—*Ellerman v. Chicago Junction Railways & Union Stock Yards Co.*, N. J., 23 Atl. Rep. 285.

21. COUNTY — Liabilities — Except as forbidden by some express or implied constitutional inhibition, the legislature may upon creating a new county provide such regulations touching the liabilities and assets of the county from which it is carved as legislative wisdom shall dictate.—*Board of County Com'rs v. Board of County Com'rs*, Colo., 28 Pac. Rep. 476.

22. COURTS—Contempt — Habeas Corpus. — While, in general, every superior court of record is the exclusive judge of contempts committed against it, and its decision is not reviewable by any other court upon *habeas corpus*, yet, under Code Crim. Proc. art. 153, the Texas court of appeals has authority to discharge persons committed for contempt by a district court which was without jurisdiction to make the order of commitment.—*Ex parte Degener*, Tex., 17 S. W. Rep. 1111.

23. COURTS—Disqualification of Judge— Perjury. — It does not *per se* disqualify a judge of the superior court to preside on the trial of an indictment for perjury, that the same judge presided at the trial of the case in which the alleged perjury was committed, and also of a second case in which one of the witnesses in the first was convicted of perjury. — *Heflin v. State*, Ga., 14 S. E. Rep. 112.

24. CRIMINAL EVIDENCE — Burglary. — On a trial for burglary, it is not error to permit a witness to testify that he measured tracks found at the place of burglary, and also examined the shoe defendant had on just after the commission of the offense, and that upon placing the shoe in the track he found that it fit exactly.—*McLain v. State*, Tex., 17 S. W. Rep. 1092.

25. CRIMINAL EVIDENCE—Homicide.—On a prosecution for assault with intent to murder, no evidence can be received of an assault committed by defendant on the

same party after the filing of the indictment on which he is being tried.—*Crass v. State*, Tex., 17 S. W. Rep. 1096.

26. CRIMINAL EVIDENCE—Homicide.—On a trial for assault with intent to murder, defendant offered to show, by an eye-witness of the assault in question, that the pistol then drawn by defendant was fired accidentally, and that he did not offer to shoot again: *Held*, that the evidence was properly rejected as immaterial.—*Watts v. State*, Tex., 17 S. W. Rep. 1092.

27. CRIMINAL LAW—Forgery. — It is not necessary to show, upon the face of an indictment for forgery, how or in what manner a person is to be defrauded. That is a matter of evidence at the trial. All that is necessary in the indictment is to show an instrument which on its face is capable of being used to create a liability, and to aver that it was made with intent to defraud.—*Mead v. State*, N. J., 23 Atl. Rep. 264.

28. CRIMINAL LAW— Homicide.— On a trial for murder, an instruction that,where an unlawful killing is established, and there is no evidence to establish the existence of express malice, or mitigate or justify the the act, "then the law implies malice, and the offense is murder in the first degree," is erroneous, as a killing upon implied malice is murder in the second degree.—*Baltrip v. State*, Tex., 17 S. W. Rep. 1106.

29. CRIMINAL LAW — Homicide — Confessions.— On a trial for manslaughter by drowning defendant confessed that she had had a child born alive, and had put it into a spring while it was alive. The birth of the child alive was corroborated, but the only corroborative evidence that it was drowned, or had been put in the spring, was the testimony of one witness that he saw it on or near the edge of the spring, and that the body was wet: *Held*, that this was not sufficient to prove the *corpus delicti*.—*Harris v. State*, Tex., 17 S. W. Rep. 1110.

30. CRIMINAL LAW— Homicide — Manslaughter.— Defendant went with a constable's *posse* on which he had been summoned, to arrest a negro, at night, without a warrant. By mistake they stopped deceased, who, as witnesses for defendant testified, on being hailed, said, "Who the hell are you?" and fired two pistol shots, whereupon the fire was returned, and deceased was killed. The prosecution contended that deceased was unarmed, and was killed without resistance. The defense was the mistake as to deceased's identity, and self-defense: *Held*, that an omission to charge the jury that the crime might be manslaughter was ground for reversal of a conviction of murder- — *Carter v. State*, Tex., 17 S. W. Rep. 1102.

31. CRIMINAL LAW—Theft. — The penalty for stealing sheep of the value of $20 or over beingdifferent from that prescribed for theft generally of property of the value of $2) or more, a charge on a trial for the former crime giving the penalty prescribed for the latter crime is fatally erroneous, notwithstanding, the penalty being greater in the former case, the charge inures to the benefit of the accused. Work v. State, 3 Tex. App. 233, overruled.— *Spradling v. State*, Tex., 17 S. W. Rep. 1117.

32. CRIMINAL PRACTICE— Larceny.— Where an indictment for theft alleges the property to have been owned by a corporation, it must, after giving the true corporate name, and setting out the fact of incorporation, aver that the property was taken from the possession of some one who was holding the same for the corporation, without the consent of such person, and with the intent to deprive the owner of the value of the property. — *Thurmond v. State*, Tex., 17 S. W. Rep. 1098.

33. CRIMINAL TRIAL — Instructions. — On a trial for theft of a horse, defendant moved the court to instruct the jury that "the burden of proof never shifts from the State to the defendant, but is upon the State throughout to first established every constituent element of the offense:" *Held*, that the court erred in refusing the instruction.—*Horn v. State*, Tex., 17 S. W. Rep. 1094.

34. DEATH BY WRONGFUL ACT — Damages. — The measure of damages in an action for the death of a person, through the wrongful act of another, under Hill's Code, § 371, is the pecuniary loss suffered by his estate, without any *solatium* for anguish of surviving relatives or suffering of deceased, and that loss is what deceased would have probably earned by his business during the residue of his life taking into consideration his age, ability and disposition to labor, and his habits of life.—*Carlson v. Oregon Short-Line & U. N. Ry. Co.*, Oreg., 28 Pac. Rep. 497.

35. DEDICATION OF STREETS.—W, being the owner of the land, surveyed, laid out, and platted the same into lots, streets and alleys, as and for a town; made a map thereof, and sold the lots with reference to said map, and as designated and numbered thereon; such map being afterwards duly admitted to record, and the town as laid out being established and named by act of the legislature: *Held*, such acts and conduct on the part of such owner constitute *prima facie* evidence of the intent on his part to dedicate such streets to public use.—*Taylor v. Town of Philippi*, W. Va., 14 S. E. Rep. 130.

36. DEDICATION OF STREETS—Reservation.—A dedication of a street subject to the burden of a railroad right of way is valid, as such a reservation does not destroy the purpose of the grant (namely, the creation of a highway), or prevent the municipality from exercising police powers over the place granted.—*City of Noblesville v. Lake Erie & W. R. Co.*, Ind., 29 N. E. Rep. 484.

37. DEED—Effect of Reservation.—Where the *habendum* clause of a formal conveyance in fee reserves to the grantors the right and use of the land during their natural lives, and the covenant of warranty contains the clause, "With the exception as above stated, the right of living and using said lot while they [the grantors] live," the right thus excepted out of the grant does not prevent the title from passing to the grantee.—*Cable v. Cable*, Penn., 23 Atl. Rep. 223.

38. DEED—Limitation—Remoteness. — Where land is conveyed to a religious society for as long as the society shall support certain specified doctrines, the deed reciting that when the land is devoted to other purposes "then the title of said society or its assigns shall forever cease and be forever vested in the following named persons," etc., the limitation is void for remoteness, even though the grantor designated himself as one of those to take under the limitation.—*First Universalist Society v. Boland*, Mass., 29 N. E. Rep. 524.

39. DEED—Mental Unsoundness.— A deed will not be judged invalid for want of capacity in the grantor where the only evidence is that of witnesses who testify as to his change in personal appearance after many years, and as to facts consistent with soundness, as well as unsoundness, of mind. —*Elcessor v. Elcessor*, Penn., 23 Atl. Rep. 230.

40. DEED—Reformation.—In a suit to reform a deed, where plaintiff's evidence lacked that precision, accuracy, and definiteness necessary to enable the court to make the decree sought, his suit was properly dismissed.—*Parker v. Thomson*, Oreg., 28 Pac. Rep. 502.

41. DIVORCE—Marriage— Cohabitation.—In a suit for divorce in Massachusetts, evidence that a man and woman, under an unsolemnizee marriage contract, cohabited in New Hampshire, where such acts do not constitute marriage, is insufficient to show a marriage. —*Norcross v. Norcross*, Mass., 29 N. E. Rep. 506.

42. EMINENT DOMAIN — Damages.— Const. art. 1, § 16 which provides that compensation for land taken by a corporation for public purposes shall be ascertained "irrespective of any benefit from any improvement proposed by such corporation," does not require a railroad company, which is seeking to condemn land which has risen in value on account of the prospect of the proposed road, to pay damages upon the basis of such increased value.—*Northern Pac. & P. S. S. R. Co. v. Coleman*, Wash., 28 Pac. Rep. 514.

43. EMINENT DOMAIN — Damages. — The distinction between mere damages to property by an internal improvement company in the construction of its work,

and the actual appropriation or taking of the same, is to be observed and insisted upon where an injunction is prayed by the owner, as it has been heretofore defined by this court in Mason v. Bridge Co., 17 W. Va. 396; Spencer v. Railroad Co., 23 W. Va. 407; Arbenz v. Railroad Co., 33 W. Va. 1, 10 S. E. Rep. 14; and Railroad Co. v. Gibbens, 12 S. E. Rep. 1093.—*Ohio River R. C. v. Ward*, W. Va., 14 S. E. Rep. 142.

44. EMINENT DOMAIN — Damages. — Where a strip of land running across a farm underneath which is a coal bed is appropriated by a gas company, under its right of eminent domain, for the purpose of laying a pipe line for the conveyance of gas, testimony to prove the character of the soil through which the pipe line runs, the depth of the line below the surface of the ground, the proximity of defendant's line to the underlying coal, the danger of the surface falling in when coal is removed, the probable breaking of the pipes, the danger of gas escaping into the mine, is competent and relevant.—*Jefferson Gas Co. v. Davis*, Penn., 23 Atl. Rep. 218.

45. EMINENT DOMAIN—Right to Compensation. — Section 9 of the bill of rights, which is a part of the constitution of this State, and which is intended to protect private property from being taken for public use without compensation to the owner, applies as well to the taking of material, such as stone, gravel, etc., for the purpose of constructing a work of internal improvements, as to the taking of the land itself upon which such material may be situated, and such material cannot be taken by an internal improvement company until compensation is paid or secured to the owner.—*Teter v. W. Va. Cent. & P. R. Co.*, W. Va., 14 S. E. Rep. 146.

46. EVIDENCE—Declaration of Agent.—In an action by a servant against his master for injury caused by the negligence of a fellow-servant, a declaration by defendant's foreman, made after the alleged injury, to the effect that the culpable servant "was a careless man before that, and they knew it, and that the company ought not to have kept him as long as it did," is not admissible to prove defendant's negligence.—*Beasley v. Sun Jose Fruit-Packing Co.*, Cal., 28 Pac. Rep. 485.

47. EVIDENCE — Declarations of One of Several Defendants.—In an action against several defendants for malicious prosecution, statements made by one of them, in the absence of his co-defendants, and after the plaintiff's acquittal in the criminial prosecution, to the effect that his own testimony therein was false, and that he was hired to testify, are admissible against himself only, and not against his co-defendants.—*Roberts v. Kendall*, Ind., 29 N. E. Rep. 487.

48. EVIDENCE—Parol.—It is error to admit parol testimony as to the contents of a letter because the person in whose possession it is, is without the jurisdiction of the trial court, where it is not shown that the letter has been lost or destroyed, or that any effort has been made to procure it.—*Kirchner v. Laughlin*, N. Mex., 28 Pac. Rep. 505.

49. EXECUTION — Supplementary Proceedings.—When a garnishee denies the indebtedness charged, the court has no authority to decide the issue, under Code, § 385, providing that the judge may order property of the judgment debtor to be applied to the satisfaction of the judgment, since by section 386 the court is expressly directed in such case to order the judgment debtor to bring an action against the garnishee to determine the facts.—*Everton v. Powell*, Wash., 28 Pac. Rep. 536.

50. FRAUDS, STATUTE OF.—A promise in writing by a wife after the death of her husband, given to a person holding a note executed by the husband, to pay all the debts when she sells some land, is not within the statute of frauds, and is enforceable after a sale of the lands.—*Moore v. Alston*, Tex., 17 S. W. Rep. 1117.

51. FRAUDULENT CONVEYANCES.—A voluntary conveyance by a husband to his wife, which is intended or which tends to defraud existing creditors of the husband, cannot be upheld against such creditors. If the husband be insolvent at the time of making such conveyance, or if by reason of such conveyance he is rendered unable to pay his existing debts, the wife's title will be deemed fraudulent.—*Gwynn v. Butler*, Colo., 28 Pac. Rep. 466.

52. FRAUDULENT CONVEYANCES—Consideration.— Under our statute against fraudulent conveyances, etc., a *bona fide* purchaser for valuable consideration, who had no notice of the fraudulent interest of his immediate grantor, or of the fraud rendering void the title of such grantor, is protected.—*Blackshire v. Pettit*, W. Va., 14 S. E. Rep. 133.

53. FRAUDULENT CONVEYANCES—Preferences.—A wife advanced money to her husband for the purpose of building upon lots owned by him, under an agreement that he should afterwards convey the lots and buildings to her. He neglected to do so until a judgment was about to be entered against him for a debt which he had incurred before he got title to the lots upon which he built. Just before the judgment was entered he conveyed the lots to his wife. The judgment creditor filed a bill to have this deed set aside, as a fraud upon creditors: *Held*, that the husband had the right to pay or secure his wife in preference to other creditors.—*Brock v. Hudson County Nat. Bank*, N. J., 23 Atl. Rep. 269.

54. FRAUDULENT CONVEYANCES — Relationship.—Where a sale of personal property has been attacked on the ground of fraud, the vendee being a brother of the vendor, the law requires clearer and more convincing proof of the *bona fides* than where the transaction had been between persons not related.—*Reeves v. Skipper*, Ala., 10 South. Rep. 309.

55. GAMING—Accomplices.—In a prosecution for illegal gaming the court rightfully refused to rule as a matter of law that a police officer who frequents a gaming table, and afterwards exposes the game is an accomplice.—*Commonwealth v. Baker*, Mass., 29 N. E. Rep. 512.

56. GARNISHMENT — Service of Writ.—Under Code, § 2945, which provides that attachments may be executed by summoning any person indebted to defendant, or having in his possession any money or effects belonging to defendant, the issue of the attachment, and its possession by the officer, are essential prerequisites to a valid execution by a service of garnishment.—*Donald v. Nelson*, Ala., 10 South. Rep. 317.

57. GUARDIAN.—Where the guardian of a minor loaned money belonging to her, and the note and mortgage taken therefor ran to himself as such guardian, and he afterwards settled his accounts with and paid her in full, such note and mortgage became his property.—*Wright v. Robinson*, Ala., 10 South. Rep. 319.

58. HIGHWAY—Contributory Negligence.—Where one who had knowledge of the unsafe condition of a highway sent his team over such highway, he is guilty of contributory negligence, and the township cannot be held in damage for an injury to the team resulting therefrom.—*Hill v. Tionesta Tp.*, Penn., 23 Atl. Rep. 204.

59. INJUNCTION — Dissolution Damages. — Where, on dissolving an injunction, the chancellor limits the damages defendant is entitled to recover on the injunction bond, there was nothing in the decree injurious to defendant, as the question of the measure of damages was without the chancellor's jurisdiction.—*Bogacki v. Welch*, Ala., 10 South. Rep. 330.

60. INJUNCTION TO RESTRAIN SUITS.—Plaintiff sought to restrain the collection of claims against it on policies of insurance assigned to defendant by the former holders thereof, who had surrendered the policies for their cash value as estimated by plaintiff, and had given receipts in full discharge of all claims. Defendant alleged that the surrender of the policies and the receipts had been fraudulently obtained: *Held*, that plaintiff was not entitled to an injunction.—*Metropolitan Life Ins. Co. v. Fuller*, Conn., 23 Atl. Rep. 193.

61. INSURANCE—Double Insurance. — Where a policy provides for insurance upon certain property, and other policies provide for insurance upon the same as

well as other property, and there is nothing to show how much of the latter policies is applicable to the property embraced by the former, this is not a case of double insurance, within the meaning of a provision of the former.—*Clarke v. Western Assur. Co.*, Penn., 23 Atl. Rep. 248.

62. INSURANCE—Policy.—The arbitration provided for under such provision in a policy of insurance does not undertake to oust the courts of their jurisdiction, and is not obnoxious to law.—*Hanover Fire Ins. Co. v. Lewis*, Fla., 10 South. Rep. 297.

63. INTOXICATING LIQUORS—Sales by Agent.—An agent and commercial traveler for a wholesale druggist, who is doing business in the city of Parkersburg, Wood county, W. Va., who receives an order in Roane county, W. Va., on the firm he represents, for two gallons of alcohol, is liable to indictment and conviction under section 1, ch. 32, Code W. Va., in the county where the order was received, unless he shows, by way of defense, that he was acting under a State license at the time and place of receiving said order.—*State v. Swift*, W. Va., 14 S. E. Rep. 185.

64. INTOXICATING LIQUORS — Sales to Minors.—In a prosecution for selling liquor to a minor, where defendant sought to show that he endeavored to comply with the law, and that his clerks acted under strict orders, which would materially reduce the number of sales he might legally make, it was within the discretion of the court to admit evidence as to the number of sales within a certain week, excluding Sunday, and the number during the week following.—*Commonwealth v. Stevens*, Mass., 29 N. E. Rep. 508.

65. JUDGMENT — Amendment of Record. — Where a judgment was prematurely rendered as upon constructive service, when in fact there had been personal service, and the legal time for answering under such personal service had expired before the rendition of judgment, *held*, that the fact of such personal service might be shown by an amendment of the record upon proper notice, or by other equivalent proceedings under the practice in this State so as to uphold the judgment.—*Seeley v. Taylor*, Colo., 28 Pac. Rep.

66. LANDLORD AND TENANT — Estate for Years.—The owner of an estate for years may, by appropriate acts create a right of way over the land during his term, in favor of other estates, even estates for years. Where the servient and dominant estates are both for years, such rights would have all the qualities of easements, but would cease at the expiration of the estates on which they depend.—*Newhoff v. Mayo*, N. J., 23 Atl. Rep. 265.

67. LIMITATIONS—Note of Firm after Dissolution.—A promissory note executed by a member of a firm, after its dissolution in consideration of the balance due upon an account with the firm prior to dissolution, is not, in the absence of express authority to execute it, such promise in writing as a will, under the provisions of section 4992, Rev. St., take the demand on the account out of the statute of limitations, as against the other members.—*Kerper v. Wood*, Ohio, 29 N. E. Rep. 501.

68. MANDAMUS — National Bank.—State courts have jurisdiction to compel the officers of national banks by *mandamus* to exhibit to the county assessor the list of the shareholders in their banks, which list they are required by Rev. St. U. S. § 5210, to keep subject to the inspection of "the officers duly authorized to assess taxes under State authority," since, in respect to that duty, the bank officers are not officers of the United States.—*Paul v. McGraw*, Wash., 28 Pac. Rep. 532.

69. MARRIED WOMAN—Removal of Disabilities.—A petition which avers that the petitioner, a married woman, owns land—her statutory separate estate—which she desires to incumber for the purpose of raising money, and prays that she may sue and be sued as a *feme sole*, mortgage, convey, and otherwise dispose of her separate estate as fully as if she were a *feme sole*, is insufficient to support a decree relieving her of the disabilities of coverture, under Code 1876, § 2731, which provides that such relief may be granted on a petition praying that the married woman be decreed a *feme sole* so far as to invest her with "the right to buy, sell, hold, convey, and mortgage real and personal property, and to sue and be sued as a *feme sole*."—*New England Mortgage Security Co. v. Powell*, Ala., 10 South. Rep. 324.

70. MASTER AND SERVANT—Discharge.—The discharge of a foreman in a shoe factory, employed by the year, is justified by his failure to perform his duties for seven weeks, though caused by sickness.—*Johnson v. Walker*, Mass., 29 N. E. Rep. 522.

71. MASTER AND SERVANT—Illegal Discharge—Waiver. —If an employee, having been illegally discharged, sent in his written resignation, and the same has been accepted by his employer, a suit will not lie in his behalf on the contract of service.—*Wharton v. Christie*, N. J., 23 Atl. Rep. 258.

72. MASTER AND SERVANT—Independent Contractor.—In an action for personal injuries, it appeared that B & Co. were subcontractors of A T & I Co., in constructing defendant's railroad; that plaintiff was injured while a passenger on a pass issued by B & Co. over a portion of the road yet in their possession and under their control, on a train furnished by defendant to B & Co. and A T & I Co., as a construction train, through the negligence of an engineer employed by and under control of the latter company: *Held*, that defendant was not liable.—*Scarbrough v. Alabama Midland Ry. Co.*, Ala., 10 South. Rep. 316.

73. MASTER AND SERVANT—Mining Act.—Where an employee in a coal mine, whose duty it is to examine the roof after making a blast, and place props to support it if necessary, fails to do so, though props were conveniently at hand for that purpose, and is injured by the fall of coal loosened by the blast, the proximate cause of his injury is his negligence and not the failure of the mining company to comply with the provisions of the mining act of 1885.—*Christner v. Cumberland & Elk Lick Coal Co.*, Pa., 23 Atl. Rep. 221.

74. MECHANIC'S LIEN — Evidence — Instructions. — It was error to charge that if "changes in the original contract were plain and palpable to defendants silence of defendants is some presumptive evidence of a previous mutual consent," since the charge fails to state whether the changes were noticed by defendants.—*Moore v. Carter*, Pa., 23 Atl. Rep. 243.

75. MECHANIC'S LIEN—Notice.—A notice of lien by a subcontractor, with a single date, claiming a round sum for work done on, and materials furnished for, buildings under a contract to which the owner is a stranger, and not showing where the buildings are situated, is insufficient, under Act June 16, 1836.—*Brown v. Myers*, Pa., 23 Atl. Rep. 254.

76. MUNICIPAL CORPORATION — City Council.—When the record of a special meeting kept by the clerk shows that the meeting was called for the purpose of transacting the very business which was transacted, and that every member of the council was present and participated in the proceedings, the presumption is, in the absence of evidence to the contrary, that the meeting was a legal meeting, duly and regularly called.—*City of Greeley v. Hamman*, Colo., 28 Pac. Rep. 460.

77. MUNICIPAL CORPORATION — Police Department—Removals.—Under Act May 2, 1885, (Laws, p. 326), entitled "An act to remove the fire department in the cities of this State from political control," the position or office of "call members" in the fire department of Newark may be vacated or abolished.—*Board of Fire Com'rs v. Lyon*, N. J., 23 Atl. Rep. 274.

78. MUNICIPAL CORPORATION—Public Improvements—Grade.—Property abutting on a street dedicated by the owner in 1874 was conveyed to plaintiff through deeds made in 1874. The deeds contained no provision as to the grading of the street, or the damages arising therefrom. Plaintiff was one of the petitioners for a change of the grade of the street: *Held*, that plaintiff was not thereby estopped to claim damages for injuries to his property caused by such change of grade in 1897 in ac-

cordance with a grade established by the borough in 1877.—*Jones v. Borough*, Pa., 23 Atl. Rep. 252.

79. MUNICIPAL CORPORATION—Validity of Ordinance.—Ordinance 1171, § 5, City of Seattle, imposing a penalty on persons erecting a certain class of buildings made of combustible materials within certain fire limits, and declaring such buildings nuisances, and giving the council power to tear them down, is not void on the ground that it is not authorized by the city charter, which empowers the city to prohibit the erection of such buildings, and to provide for their removal.—*Baxter v. City of Seattle*, Wash., 28 Pac. Rep. 537.

80. MUNICIPAL IMPROVEMENTS—Opening Streets—Damages.—In proceedings for assessing damages in opening a street, it appeared that another street was laid out across the same plat many years before, but was never opened: *Held*, that damages should be assessed with reference only to the proposed opening, and without regard to the street formerly laid out.—*Sargent v. City of Pittsburgh*, Pa., 23 Atl. Rep. 221.

81. NEGLIGENCE.—A wife, entirely free from negligence, was riding with her husband over a railroad crossing, and was injured by the negligence of the railroad company. Her husband was guilty of contributory negligence: *Held*, that the husband's negligence could not be imputed to the wife.—*Louisville, etc. R. Co. v. Creek*, Ind., 29 N. E. Rep. 481.

82. NEGLIGENCE — Dangerous Premises.—An invitation to the public to go upon the yard of a tenement house, if implied from the aspect of the house and grounds, does not extend to all parts of the yard, irrespective of pathways or necessary lines of travel; and a licensee cannot recover for an injury caused by falling at night into a cellar-way negligently left unguarded, where it does not appear that the route chosen by him was specially appropriated to travel.—*Walker v. Winstanly*, Mass., 29 N. E. Rep. 518.

83. NUISANCE — Constitutional Law—Police Power.—Acts 1885, ch. 382, § 2, as amended by Acts 1889, ch. 450, § 2, requiring every building used as a dwelling, or in which persons are employed, if situated on a street in which there is a public sewer, to "have sufficient water-closets connected with the sewer," applies to houses built before its passage.—*Commonwealth v. Roberts*, Mass., 29 N. E. Rep. 522.

84. OFFICE AND OFFICERS — Election of Governor.—Const. art. 4, § 2, requires the general assembly, on examination of the votes cast for governor at the election therefor, to declare elected the person they find to be legally chosen, and if, after such examination, they find that no one is elected, to proceed to ballot for a governor "on the second day of their session:" *Held*, where the assembly fails to follow these provisions, that the governor holding over is the *de jure* as well as the *de facto* governor.—*State v. Bulkeley*, Conn., 23 Atl. Rep. 186.

85. PARTITION.—The right of co-owners of property to demand a partition thereof is absolute, and, where the co ownership is admitted, appeal does not lie from a simple decree of partition.—*Reynolds v. Reynolds*, La., 10 South. Rep. 303.

86. PARTNERSHIP — Notice of Dissolution. — Where a partnership has been dissolved, constructive or implied notice of the dissolution will be sufficient as to those who have had no previous dealings with the firm, but as to those who have had previous dealings it is requisite that actual notice be given, or that such steps be taken as to warrant the inference that notice was received. — *Joseph v. Southwark Foundry & Mach. Co.*, Ala., 10 South. Rep. 327.

87. PARTNERSHIP—Officers. — A member of a limited partnership, who by its articles was to be superintendent, tendered his resignation, to take effect not later than a certain day, but no action was taken on it by the stockholders for about a month thereafter, when they accepted it, but in the mean time he had withdrawn it: *Held*, that there being no resignation before them at the time, their action did not relieve him from office.—*Jennings, Beale & Co. v. Beale*, PENN., 23 Atl. Rep. 225.

88. PRINCIPAL AND SURETY — Subrogation.—A surety in a note which has been reduced to judgment may pay the amount due, take an assignment, and become subrogated to the rights of the judgment creditors, and sell and assign his interest, before having any adjudication of his suretyship.—*Frank v. Fraylor*, Ind., 29 N. E. Rep. 486.

89. PUBLIC LANDS—Patents.—The government patent to land issued under the act of congress of July 1, 1862, and the several acts amendatory thereof, to aid in the construction of a Pacific Railway, etc., takes effect by relation as of the time when the railway company definitely fixes the line of its road by filing the map thereof in the office of the commissioner of the general land-office.—*Howell v. Killie*, Colo., 28 Pac. Rep. 464.

90. QUIETING TITLE—Possession.— A bill to quiet title will not lie where there is no proof that the land is either in plaintiff's possession or unoccupied.—*Spithill v. Jones*, Wash., 28 Pac. Rep. 531.

91. RAILROAD COMPANIES — Killing Dogs.— Dogs are not "stock," within the meaning of Rev. St. art. 4245, and railroads are not required to fence against them.—*Texas & P. R. Co. v. Scott*, Tex., 17 S. W. Rep. 1116.

92. RAILROAD COMPANIES—Right of Way.—A railroad company authorized to take for its right of way a strip not exceeding 60 feet in width is, in the absence of any designation of its boundaries, presumed to have taken the full 60 feet though the road be located in a street less than 60 feet wide. — *Jones v. Erie & W. V. R. Co.*, Penn., 23 Atl. Rep. 251.

93. RAILROAD COMPANIES— Stock Killing.—Where an action is brought to recover damages for the killing of stock upon a railroad track, the rights, liabilities, and duties of the respective parties have been well defined and settled in this State in the cases of Blaine v. Railroad Co., 9 W. Va. 252; Baylor v. Railroad Co., *Id.* 270; Hawker v. Railroad Co., 15 W. Va. 628; Washington v. Railroad Co., 17 W. Va. 190; and Johnson v. Railroad Co., 25 W. Va. 570; and the principles laid down in those cases are approved and reaffirmed.—*Layne v. Ohio River R. Co.*, W. Va., 14 S. E. Rep. 123.

94. RECEIVER— Appointment. — In a suit to settle a partnership, where the defendant, in possession of property which was claimed to constitute its assets, denied the existence of a partnership, and showed that he was entirely solvent, and able to respond to any measure of relief which might be decreed plaintiff, it was error to appoint a receiver of such property.—*Irwin v. Everson*, Ala., 10 South. Rep. 320.

95. REFERENCE— Garnishment. — Act June 16, 1836, § 8 which provides that either party to a civil action may enter a rule of reference, etc., does not entitle a garnishee in an execution attachment to a reference to arbitration, though a plea of *nulla bona* be entered; such proceedings not being original in its nature.—*Stranahan v. Wright*, Penn., 23 Atl. Rep. 253.

96. RES JUDICATA.—Where defendant pleads a former judgment, which may have proceeded on either or any of two or more facts, and he fails to show affirmatively that it was decided on the particular fact involved in the subsequent suit, the plea will not stand.—*Dygert v. Dygert*, Ind., 29 N. E. Rep. 490.

97. RES JUDICATA — Assignment of Mortgage. — The owner of a mortgage, by an unrecorded assignment, is bound by proceedings in foreclosure of a prior mortgage in this court to which his assignor was made a party defendant by reason of his apparent ownership of the mortgage, so far as the mortgaged premises are concerned, although he was not a party to such proceedings.—*Cannon v. Wright*, N. J., 23 Atl. Rep. 285.

98. RES JUDICATA — Claims Against Decedent.— Act Feb. 24, 1834, § 34, providing that, to charge a decedent's real estate in suits against his personal representatives, the widow, heirs, and devisees must be made parties, does not give the right to be twice heard on one issue

by the same person, and a judgment against an executor who is also a devisee is conclusive against him as to the debt on *scire facias*.— *Commonwealth v. Cochran*, Penn., 23 Atl. Rep. 203.

99. SALE—Attachment.— Plaintiffs delivered goods to S, who signed a writing, which recited that he had "borrowed and received" the goods, to be returned to plaintiffs on demand; that he might purchase the goods for a certain sum, payable in installments, which he agreed to pay; and that, until payment, the right to possession should remain in plaintiffs: *Held*, not a sale passing title to S, and a mortgage back to plaintiffs; but the title remained in plaintiffs, who until payment of the stipulated sum, were entitled to possession as against attaching creditors of S.—*Nichols v. Ashton*, Mass., 29 N. E. Rep. 519.

100. SHERIFFS — Process. — In an action against a sheriff for returning an execution *nulla bona*, where it was alleged that there was property which ought to have been seized, and which defendant had seized, but released, evidence showing the true ownership of the property in question should have been admitted. —*Dornan v. McCandless*, Penn., 23 Atl. Rep. 245.

101. STATUTE — Construction. — A remedial statute should be liberally construed, whenever such construction will advance the remedy intended, but not when it will defeat the object of the statute.—*Heil v. Simmonds*, Colo., 28 Pac. Rep. 475.

102. TAXATION. — Rev. St. 1881, § 6283, provides that "every person of full age and sound mind shall list his or her tangible personal property subject to taxation." Section 6339, imposes a penalty for giving the assessor a false and fraudulent list of such property: *Held*, in action to recover such penalty, that the complaint need not show that defendant is of full age and sound mind, she having so far affirmed her capacity to list the property as to deliver the list to the assessor.— *Swift v. State*, Ind., 29 N. E. Rep. 488.

103. TAXATION—Domicile.—For the purposes of taxation, the domicile of the administrator is the legal *situs* of the credits belonging to the estate, and it is his duty to list them in the township, city or village where he resides on the day preceding the second Monday of April each year they are required to be listed.—*Sommers v. Boyd*, Ohio, 29 N. E. Rep. 497.

104. TAXATION—Exemption—Ditches.— A corporation owning a ditch constructed for the purpose of selling and disposing of rights to water, together with parcels of land owned by the corporation, on condition that when all or most of such rights are sold, the price thereof paid, the ditch, appurtenances, stock, and franchise may pass to those who purchased the water-rights, is not within the provisions of Const. art. 10, § 3. —*Empire Land & Canal Co. v. Board of County Com'rs*, Colo., 28 Pac. Rep. 482.

105. TAXATION- Railroad Cars—Interstate Commerce. —A State has the right to tax any personal property found within its jurisdiction, without regard to the place of the owner's domicile. — *Denver & R. G. Ry. Co. v. Church*, Colo., 28 Pac. Rep. 468.

106. TAXATION— Shares in National Bank. — For the purposes of taxation, bank shares of stock are worth what their market value is at the time the assessment is made, and not what their value may be on the consummation of a contemplated closing of the bank's business, and a division made among the shareholders. —*National Bank v. City of New Bedford*, Mass., 29 N. E. Rep. 532.

107. TRESPASS BY LANDLORD—Removal of Building.— Where an ordinance is passed for the opening of a street, and a mandate issues directing the owner of a certain building to remove the same, the tenant, although he may have a right of action against the city for injuries on account of the removal, has no right of action against the owner, who, in making the removal acts merely as the representative of a city officer. — *Dunn v. Mellon*, Penn., 23 Atl. Rep. 210.

108. UNITED STATES—Claims Against.—Where a shipowner conveys in general terms his interest in a ship and voyage to one of his co-owners, including "any claims by the owners of said ship against the United States government, being a compromise sale and settlement on all matters pertaining to the ship," and congress subsequently appropriates money for a pre-existing claim of such ship against the government, the conveyance is not void under Rev. St. U. S. § 3477, providing that an assignment of a claim against the United States made before the allowance of the claim by the government is void. — *Jernegan v. Osborn*, Mass., 29 N. E. Rep. 520.

109. VENDOR AND VENDEE — Bona Fide Purchaser.— One acquiring the legal title to ground, with notice of the possession, claim of ownership, and pending attempts to correct the defective description by a person other than his grantor, takes the title subject to the rights of the adverse claimant.— *Ross v. Purse*, Colo., 28 Pac. Rep. 473.

110. WATER COMPANY — Regulations. — A rule of a water company which requires water-rates to be paid quarterly, adds a penalty of 5 per cent. in case of default of payment for 10 days, and provides that after a default for 15 days the water shall be shut off from the premises, is a reasonable regulation.— *Tacoma Hotel Co. v. Tacoma Light & Water Co.*, Wash., 28 Pac. Rep. 516.

111. WATER COURSES— Rights of Tenants in Common. —A tenant in common in certain water-rights of a ditch for mining purposes, its use for mining having been abandoned and its flow turned into another stream, may recapture and use his proportion of the water for irrigating or other lawful purposes.— *Meagher v. Hardenbrook*, Mont., 28 Pac. Rep. 451.

112 WILL — Construction. — A will gave to each of several legatees a specified number of shares of stock in a manufacturing company, including a bequest of 500 shares to testator's brother for life, and then provided that the residue of such stock owned by the testator at the time of his death "shall be divided among the several persons and parties to whom I have herein before given legacies of stock, in the ratio and proportion in which said legacies of stock are herein before given; meaning that my residuary estate in said stock shall be shared by the same persons to whom I have given specified legacies in stock, and in precisely the same ratable proportions." By a codicil testator provided that "I also revoke and cancel, for reason growing out of his late unbrotherly conduct towards me, the legacy of 500 shares of the stock given in the aforesaid will" to his brother: *Held*, that the proportional part of the residuary stock which would fall to the brother by virtue of the specific legacy was separate and independent from it, and hence was not revoked by the revocation of the latter.—*Colt v. Colt*, U. S. C. C. (Conn.), 48 Fed. Rep. 385.

113. WILLS — Devise.— Where a sum of money is devised "to be paid when she [the devisee] comes of age," such legacy is not a charge on the testator's real estate unconditionally devised to others, there being no intimation in the will that such was the testator's intention.—*In re Duvall's Estate*, Penn., 23 Atl. Rep. 231.

114. WILLS — Proof of Execution. — A testator addressed a paper in the form of a letter to his attorney, directing that he draw testator's will. The letter stated that the will should provide for the payment of his debts, named his executors, mentioned the amount of his estate, provided for the division of it among his children, and explained why no provision was made for his wife. The letter was signed by the testator, and the signature proved by three witnesses: *Held*, that parol evidence was admissible to prove that he declared it to be his last will and testament.— *Appeal of Scott*, Penn., 23 Atl. Rep. 212.

115. WILL— Void Legacy.— Where a legacy was void by reason of the improper execution of the will, such legacy goes to the next of kin of testator, rather than to the residuary legatees. — *In re Gray's Estate*, Penn., 23 Atl. Rep. 205.